



The Andal Report:

Taxation of Telecommunications and Energy in California

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DEAN F. ANDAL, MEMBER
CALIFORNIA STATE BOARD OF EQUALIZATION
Second District
450 N. Street
Sacramento, CA 95814
(916) 324-2057



Dean Andal

Dean Andal was elected to the Board of Equalization in 1994 to represent the Second District which includes the Central Valley, Inland Empire, and the Central Coast of California.

Dean began his public service as an assistant to then Congressman Norm Shumway (R-Stockton).



As President of Andal Communications, a Stockton based marketing company, Dean has acquired valuable insight into the burdensome regulations and excessive taxation inflicted on California business.

Prior to his election to the Board of Equalization, Dean served as a Member of the California State Assembly for two terms. He represented the 17th Assembly District which encompasses Stockton and most of San Joaquin County. During his tenure in the Assembly, Dean served as a member of the influential Revenue and Taxation and Ways and Means Committees, was honored by major taxpayers' rights groups as "Taxfighter of the Year" for 1992, and served as the Chief Republican Budget Negotiator for the 1993-94 session. Among Dean's most fulfilling accomplishments was the enactment of the "trigger" mechanism in the 1994-95 budget, which requires across the board spending cuts in state government in the event state revenues fail to meet projections.

Since his election to the State Board of Equalization in 1994, Dean has implemented an intensive office consolidation within the 28 counties he represents. To date, he has closed 14 offices — generating over \$40 million dollars in savings for California taxpayers.

Dean and his wife Kari reside in Stockton with their young son, Patrick. An Eagle Scout, Dean continues to be active in Scouting.

The Andal Report: Taxation of Telecommunications and Energy in California presents a timely and complex issue which Californian's must address to secure a healthy economy for the future. The Report is the culmination of more than a year of research and data collection by Dean and his dedicated staff.

Special thanks to Greg Turner, Chief Deputy and Counsel, whose responsibility has been to coordinate the compilation of data and drafting of the Report. Greg joined Dean's staff after serving as a consultant to the Assembly Republican Caucus and most recently as Legal Counsel to the Assembly Republican Leader.

Additional thanks to two tireless law clerks in Jon Sperring and Marty Dakessian. Jon and Marty spent the better part of their summer calling every city and county in the state collecting the information presented in this proposal. Their duties also required a substantial amount of research on the intricacies of California taxation law and policy. Without question, both of these gentlemen will be outstanding additions to the State Bar and will contribute greatly to the future of California.

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I. WHAT'S WRONG?

California's system for taxing telecommunications and energy companies was developed long before technological advances made open competition inevitable. It was designed around a rate-based model for utilities selling one service and possessing a government sanctioned monopoly. Open competition with multiple telecommunications and energy products offered by many well-capitalized competitors is upon us. Competition benefits the average Californian as it brings high quality, diverse services, lower prices, and extraordinary job growth.

Unfortunately, California's present tax system is a clear and present barrier to achieving these benefits of open competition. This report is designed to address the following disadvantages of California's current system of taxing telecommunications and energy carriers.

A. **TAX SYSTEM RETARDS DEVELOPMENT OF THE INFORMATION SUPERHIGHWAY.**

Many have spoken about the development of a predominantly fiber optic broadband information network that will connect consumers via their computers and televisions to a whole new range of products and services. Without question, the deployment of this network will substantially improve the way Americans learn, purchase products and services, work, communicate and process all other forms of information in their environments.

Unfortunately, California taxes telecommunications companies in a way as to actually impede the development of such a broadband information network. For example, local exchange carriers were granted a statewide franchise in the early part of this century to develop the telephone network; consequently they pay no local franchise fees for access to and use of public rights of way. At the time, this was correctly seen as in the public interest because it promoted the goal of universal service. Today, if a local exchange carrier begins providing services other than telephone on a non-common carrier basis (for example cable television) the rights of way used for delivery of those services become subject to franchise fees by local government. As a result, the local exchange telephone carriers are unnecessarily burdened in the development of the network necessary to compete with the cable television companies. For cable television companies, who already pay substantial franchise fees to local government, developing a network capable of competing with the switched network of the local exchange telephone

companies becomes inordinately expensive. In the end, Californians lose as the rest of the world continues to promote their telecommunications networks and reap the benefits of the jobs attributable to the system's development and use.

B. PROPERTY TAX SYSTEM IS TOO LITIGIOUS AND BURDENSOME.

It is difficult to imagine a property tax system that invites more conflict in the assessment process. Both state and locally assessed telecommunications companies have fought County Assessors and the Board of Equalization in endless disputes over the value of property (*e.g. GTE Sprint Comm. Corp. v. County of Alameda*, 26 Cal.App. 4th 992 (1994)). The state constitution requires annual assessment of utilities at "fair market value", but also excludes intangible assets from tax. State courts have complicated the assessment process by permitting the assessed value to reflect the presence of intangible assets. Confused? So is everybody else. Taxpayers seek relief from values set by the Board of Equalization and County Assessors by administrative appeal procedures and lawsuits. The extraordinary cost of litigation benefits no one but attorneys. The utilities either pay unrealistically high taxes or incur costly legal expense to secure relief. The Board and County Assessors must spend scarce personnel resources on frequent appeals and legal defense of their assessment methods. Local government receives less revenue at a higher cost than necessary and they are constantly at risk of having to pay substantial tax refunds if questionable assessment techniques are reversed in court. Bluntly, less money is available for schools, police officers, libraries, parks and all other services dependent on the property tax.

C. OPEN COMPETITION IS DISCOURAGED BY AN UNEVEN TAX SYSTEM.

Technological change is clearly opening competition for both telecommunications and energy carriers in California. While the PUC and the state legislature advance an open market for these vital services, the existing tax system stands in the way. The best example is the difference between the property tax assessment of cable television and local exchange telephone carriers. Cable television is locally assessed and as a result receives the benefit of Proposition 13's acquisition based valuation system and annual cap on valuation growth. Cable television

companies also pay property tax on the value of their use of the public rights of way (possessory interests), pay a franchise fee to local government of as much as 5% on their gross revenues, and are assessed by 58 County Assessors who have the constitutional authority to value their property. Local exchange carriers, on the other hand, are not protected by Proposition 13 and are assessed annually at fair market value on a unit basis by the Board of Equalization. They do not pay property tax on the value of their possessory interest for their use of the public rights of way or pay franchise fees. Regulators are expected to allow telephone carriers into the cable television market and cable television companies into the telephone market within the next two years. When this occurs, the telephone companies may balk at providing cable television over existing telephone lines because it opens their entire business to potential franchise fee payments to cities and counties throughout California. The cable companies similarly will be discouraged from competing in the local exchange telephone market because offering local phone service means possible state property tax assessment and loss of their Proposition 13 protection. As a result, cable television property taxes could skyrocket. Who loses? The average Californian; who is prevented from enjoying the fruits of competition: rapid job growth, lower prices and more diverse and higher quality services.

D. EXCESSIVE UTILITY TAXES CREATE POVERTY.

As of the fiscal year 1993-94, 17 cities had utility taxes that exceed 8%. It's no coincidence that many of these same cities have higher than average unemployment rates. Manufacturing plants have a strong incentive to avoid these cities because of their heavy usage of electricity and the threat of millions of dollars in utility taxes they wouldn't need to pay in other jurisdictions. Similarly, financial services companies are avoiding these cities when locating credit card service centers and other telephone dependent "back office" operations due to the high utility tax burdens on heavy phone service. This will only be compounded as the broadband network is developed. Because the broadband network will permit advanced teleconferencing as well as vastly decrease the costs of transferring data, it will become easier and less costly to locate back office and support operations in low tax jurisdictions. These and other service delivery centers are critical to the employment of unskilled and semi-skilled workers in urban areas. Those local governments that have high utility user taxes are discouraging exactly the type of jobs needed for the hundreds of thousands of

unemployed Californians who live in these cities.

To add insult to injury, these high utility taxes are extremely regressive and disproportionately burden the poor. If the objective of the cities with excessively high utility taxes is to create more poverty - it is certainly working.

E. TELECOMMUNICATIONS SURCHARGES ARE ABUSED.

Currently, telephone services in California are subject to five separate surcharges: Universal Lifeline, High Cost Fund, D.E.A.F. Fund, Emergency Telephone Users (911), and the P.U.C. Regulatory Fee. Electric customers also pay the P.U.C. Regulatory Fee as well as pay the Low Income Ratepayer Assistance and Energy Resources Surcharge. Each of these surcharges represents an effort to fund various social programs that are only tenuously related to the services to which they are attached. In many instances the programs are wasting taxpayer dollars by providing services to those who do not meet program qualifications and by improperly augmenting state general fund spending.

The largest of these surcharges (\$380 million annually) is the Universal Lifeline Trust Fund Surcharge. It is an enormous subsidy intended to ensure that those with low incomes can still afford basic telephone service. Unfortunately, although income guidelines exist for program eligibility, there is no verification of *actual* eligibility. This has two implications. First, according the Federal Communications Commission, California, unlike any other state, forgoes approximately \$50 million annually in federal funds conditioned on state verification of eligibility in the lifeline service program. Secondly, the \$380 million subsidy is spent on many who are, in fact, not poor and need no subsidy.

The Emergency Telephone Users Surcharge (911) is an example of how the legislature enacts a special taxing system to fund a specific program then, when budgets are tight and they are unwilling to control their spending, borrow against or simply rob, from those special funds to backfill the general fund. In 1993-94 fiscal year alone, the 911 program was drained of \$11 million dollars which was intended to upgrade antiquated systems in 25 counties only to be used to backfill general fund overspending. This type of back door taxation must stop.

II. THE SOLUTION.

In light of the elimination of rate-based regulatory monopolies and the introduction of open-market competition, California must revise its current system of taxation to ensure the competitive development of an advanced telecommunications network. Revamping the current system of taxing telecommunications requires balancing the sound tax policies of economic neutrality, equity, and ease of administration, with the need for state and local governments to maintain revenue stability. Not all distinctions between the taxation of telecommunications companies and other business need to be eliminated to accomplish this: instead, leveling the playing field between market participants in the telecommunications industry will achieve the goals of promoting competition and investment. Leveling the playing field ensures that similarly situated companies will be taxed the same, and can be accomplished without affecting the stability of local government revenues.

California must be on the forefront of the development of the broadband information network and continue to lead the development of new information technologies. To assume this leadership role, Californians should adopt a constitutional amendment creating a single telecommunications tax structure in lieu of the existing property tax and franchise fee system. This new structure will treat all participants the same whether they are delivering telephony or video by fiber optic or wireless systems. This proposed constitutional amendment will establish a single gross receipts tax at a rate fixed in the constitution. The proposal caps local utility user taxes at a maximum of eight percent and creates the 'Universal Telecommunications Surcharge' (UTS) to fund universal service programs, the 911 program, and the regulatory functions of the Public Utilities Commission (PUC), thereby eliminating the current separate rates charged to fund these programs. The Legislature will allocate the funds generated by the new UTS between these service programs and the P.U.C.

In addition to removing differential taxation as an obstacle to the advancement of telecommunications in California, this proposal substantially reduces the costs to state and local government for administering the property tax system and eliminates the need to separately negotiate and collect franchise fees on a company by company basis. This proposal ensures the replacement of existing revenue streams to local government and offers a dedicated revenue source. This is not a tax cut, nor does it create a revenue source that can ever be pillaged by the state; in fact, the revenue will be protected from legislative appropriation for

other uses in the constitution. Except for reimbursement of a fixed percentage to cover the costs of administration, the state will receive no revenue from this tax.

Information technology advances are quickly rendering our tax policies obsolete. If Californians fail to recognize that something more than tinkering on the edges must be done, the future jobs linked with an advanced telecommunications industry will slowly move across the border to other states and other nations.

ANDAL CONSTITUTIONAL AMENDMENT PROPOSAL

1. Gross Receipts Tax at a Fixed Rate.

(eliminate property tax and franchise fees for telecommunications and energy carriers).

2. Cap the Utility User Tax at 8%.

3. Create the Universal Telecommunications Surcharge.

(eliminate all other surcharges on telecommunications and energy services and prevent establishment of new surcharges).

III. TAXATION OF TELECOMMUNICATIONS AND ENERGY IN CALIFORNIA.

A. LOOKING TO TOMORROW

Roughly two decades into the information age we are witnessing a fundamental shift in our economy and in the way we manipulate and process information. Perhaps most importantly, this shift is predicated on the move to digital technology.¹ Sourcing information in digital form will permit consumers to use information appliances that are designed for the sole purpose of searching for information that is of interest to them, process the information into a meaningful form, and present it for their use and consumption. Rather than wait for the weather report on the local newscast, a computer or other appliance will simply be directed to update the user on the status of the weather. Instead of having to rent or buy the Star Wars Trilogy on video cassette, the user will simply select it from a library of videos for viewing on demand. The future in telecommunications is about fulfilling a simple goal: whatever, whenever, wherever, the information you desire will be the push of a button or a voice command away.

For the economy to maximize the benefit of the digital revolution, a sophisticated infrastructure must be installed so that those who provide information can be more directly connected to those who consume it. The next step in the evolution of the information age is the development of a national communications network capable of providing consumers access to countless sources of digitized information from business and financial markets, governments, educational institutions, or the entertainment industry. Often referred to as the “information superhighway”² or “national information infrastructure”³ the deployment of this network will substantially alter the way Americans learn, purchase products and services, work, communicate, and process all other forms of information in their environment. Because the needed capacity of an advanced telecommunications network is widely believed to exceed that of installed copper-wire systems owned by the local exchange and cable television companies,⁴ the new infrastructure will consist largely of fiber optic cable capable of transmitting thousands of times more data per second than existing copper-wire systems.

The cost of installing this massive infrastructure will be enormous. Some estimates for a national broadband network are as high \$1 trillion.⁵ The necessary investment must be made by the private sector simply because the telecommunications carriers have the most to gain from an integrated broadband

network and are much more efficient in their use of capital. The potential returns to industry will fuel a major investment in this infrastructure.

Businesses most responsible for this investment can be loosely defined as the telecommunications industry, comprised of local exchange telephone carriers, interexchange telephone carriers, cable television companies, wireless communications companies (including wireless cable and satellite television, cellular, PCS, satellite communications, and paging) and the electric utilities (due to their vast fiber optic networks that will likely be utilized for the transmission of commercial data). The telecommunications industry is currently experiencing revolutionary change. Spurred by recent deregulation, telecommunications carriers are changing both the nature and manner of delivery of the services they provide. In what the telecommunications industry labels as 'convergence', participants are not only moving towards using identical technologies for the infrastructure to deliver information services (the digital fiber optic networks) but also beginning to provide the same or similar types of services across the delivery channel (movies and on-line services for example). Within the next few years there will no longer be such a thing as *the* telephone company or *the* cable company. Soon, there will simply be telecommunications providers or telecommunications carriers. Companies will have the capacity to provide a whole range of telecommunications services from video programming, teleconferencing, local phone service, long distance service to integrated wireless communications. The consumer will have a choice of a single carrier provider or a combination of providers at their discretion.

At the same time, state and local governments cling to antiquated models of regulation and taxation of the telecommunications industry that are hampering the new competitive environment and retarding the development of the advanced information infrastructure. Government's preoccupation with the past unfortunately blinds it to the realities of the future in telecommunications. Nowhere is this more apparent than in California's system of taxing telecommunications companies.

Unlike any other competitive industry, telecommunications companies have been singled out for special treatment and extra taxation. Special treatment was historically justified, and admittedly tolerated by the companies themselves, due to their status as rate-based regulated public utilities. That status also provided the company special rights and privileges as a monopoly franchise. The taxes paid by the public utilities were built into and recovered through the rate base.

Even among the telecommunications carriers are subindustries that are taxed differently than their competitors based solely on the technology they employ for the delivery of information. This has the negative effect of favoring one type of competing technology over another, a decision that should be left to the market place.

Advances in digital technology, both in transmission and compression, have rendered obsolete any distinction between the channels used for the delivery of information to the consumer. A packet of digital bits traveling through the spectrum, over a copper-wire or fiber optic cable, whether it delivers a letter, a video, sound, voice or data is simply a packet of digital bits.

Ultimately, the choice of one medium over another for transmitting information should be decided based upon individual preferences and the merits of the given medium. Unfortunately, state and local tax policies are skewing the choices available to consumers by making use of certain channels for information delivery more expensive than others. The result is hampering the development of the information superhighway and needlessly impeding the development of telecommunications technologies. If left to the market place, the natural costs of using a given channel for transmitting will be solved by supply and demand rather than the arbitrary hand of government. Roadblocks to open competition created by California's antiquated tax system retard higher quality services and obstruct lower prices offered by new carriers of telecommunications products and services.

B. OVERVIEW OF TAXES.

The taxation of telecommunications companies in California, aside from the corporate franchise (income) tax and the sales and use tax, is comprised of property taxes, franchise fees, utility user taxes, and various surcharges which fund special social programs only tenuously related to telecommunications services. The property tax is highlighted by a bifurcation between property values established by the State Board of Equalization ("state assessed property") and those set by the County Assessor ("locally assessed property"). Although state assessment has the benefit of providing the large, multi-jurisdictional utilities with a single government agency to administer the property tax, it also means its property is valued annually at market because it receives no protection under Article XIII A of the California Constitution (Proposition 13. State assessed property is also valued on a unit basis (the concept of valuing a company's

taxable property as a going concern, as opposed to simply summing the individual values of the company's tangible assets). Not only does this create a substantial burden on state assesseees, as the unit method arguably taxes intangible property in violation of the law, but it also is a barrier to entry for cable television interests and other non-state assessed taxpayers who wish to provide telephony services but not risk subjecting their entire company to annual assessment at full fair market value and unit valuation.

Franchise fees, paid by cable and gas and electric companies, are a charge for the privilege of engaging in specialized services as well as for the right to use public rights of way to lay their cables. Although local exchange carriers (LECs) and cable television companies are laying similar lines beneath public rights of way, the LECs have been exempted by the state from paying franchise fees. While this produces the inequity of taxing cable television companies while not taxing the LECs, it has the more dramatic effect of delaying if not preventing the LEC's ability to compete in the cable business because such competition by the LECs would arguably eliminate their state franchise exemption.

The utility user tax is a pass-through tax which is paid by the utility services as a percentage of their bill; which has been as high as 21%.⁶ The utility tax is a general fund tax for local governments. This is a regressive tax as it effects the poor more heavily than those in the middle and upper income groups. Since the passage of Proposition 13 in 1978, the utility user tax has skyrocketed in its use. Some estimates tag the increase at more than 300% higher than inflation.⁷ Seen largely as a method of supplanting revenues lost after passage of Proposition 13, this tax has no cap and can be levied on the consumption of electricity, gas, water, sewer, telephone, and cable television service and in charter cities without a vote of the people.

Through a series of legislative enactments, most telephone bills (including cellular) are subject to various surcharges which fund separate programs for rural and low income assistance services, emergency services, and regulatory efforts. Despite the popularity of these programs among the public, these surcharge revenues continue to be a source of money for the state as the legislature has raided these funds to balance the general fund budget in lean years. By combining these surcharges into a single fund, impervious to legislative pillaging, the otherwise separate programs will compete with each other for funding by the legislature.

The tables at the end of this report represent a year-long effort to compile data on the contributions to local government budgets by the telecommunications industry. Every city and county in California was called and solicited for the information provided. In addition to data supplied directly by the cities and counties, the financial reports of cities and counties published by the State Controller, data collected by the Board of Equalization, Public Utilities Commission, County Assessors and Industry were used. The result is a review of the effect by telecommunications industry on local finance which is unparalleled in previous public policy efforts.

C. PROPERTY TAXATION.

1. Overview

A fundamental principle of a fair and equitable system of taxation is the uniform distribution of the tax burden among similarly situated taxpayers. Additionally, the administration of the tax should be simple, cost effective, and provide a degree of predictability for taxpayers. Unfortunately, for the telecommunications industry, the current property tax system in California fails these simple tests.

Most property in California is assessed by locally elected County Assessors. Local property taxation is dominated by Proposition 13 (CAL. CONST. art. XIII A), the landmark tax revolt measure that limits ad valorem property tax rates to 1% of value and, for *locally assessed* property, establishes an acquisition based valuation method limiting annual value increases in assessed value to 2%. *State assessees* (regulated telephone companies, gas and electric companies, and paging and mobile radio telephone companies), are assessed annually by the State Board of Equalization (SBE or BOE) at fair market value (CAL. CONST. art XIII, § 19). This two-tiered system has the following implications for telecommunications companies.

- Property of state assessees is subject to *annual market* valuation. Locally assessed property, such as that owned by cable television companies, only are reassessed upon new construction or change of ownership. Otherwise, the value of their property increases up to a maximum of two percent annually. State assessment for the cable companies means a substantial increase in their property tax burden.
- State assessed companies are currently struggling with the Board of Equalization over the use of the unit method for valuation, which arguably taxes intangible assets in violation of the law. This continued conflict and resulting litigation has cost taxpayers at large and state assessees in

particular millions of dollars in excessive administration and litigation. Although the concept of unit valuation is arguably available to the local assessor, by and large it is not used.

- The franchise or right to use public rights of way to string or lay cables, is a possessory interest but is only a taxable possessory interest for cable and electric companies. The statewide franchise given to telephone companies effectively precludes the valuation and taxation of their right to use the public rights of way.

PROPERTY TAX REVENUES (FY 1993-94)	
(in millions of dollars)	
Local Exchange	\$ 242.56
Inter-Exchange	34.70
Cellular	13.60
Paging and Mobile Radio	2.02
Cable Television	40.61
Gas and Electric	414.51
<i>Total</i>	<i>\$ 748.00</i>

Property tax estimates were produced by collecting assessed values for each of the industries listed above and applying those values to an average statewide tax rate. For state assessees, values were collected from Board of Equalization records. For locally assessed cable properties, County Assessors, and in some instances, the companies themselves provided the necessary data. Although the average tax rate across all counties amounted to 1.0571%, telecommunications companies have historically been disproportionately located in higher taxing jurisdictions. The use of 1.0925% as the average tax rate represents the amount of tax reported to the Board of Equalization as paid by state assessees in these industries based on the 1993 assessed values established by the Board (See Tables A-2 and A-2.1).

2. A Brief History

From the time California was admitted to the Union in 1850 until the turn of the century the state’s financial and business structure was relatively simple. As a result, the general ad valorem property tax, assessed by counties, was the basic source of revenue for both state and local governments.⁸ The rate was established

to meet biennial legislative appropriations.⁹ California's economic situation soon began to change and the emerging inequities of the existing tax system spurred the Legislature in 1905 to appoint a Commission on Revenue and Taxation to investigate the tax system and recommend plans for its revision and reform.¹⁰ Based on the findings of the Commission, California's system of taxation was substantially altered in 1910 to create separate sources of tax revenue for state and local government.¹¹ Public utility property, as well as insurance companies and banks were subject to special "gross receipts" taxes in-lieu of all other taxes on their property.¹² The revenues collected went solely for funding state government.¹³ The purpose of the gross receipts tax was to tax intangible but real values escaping assessment under the ad valorem system (County Assessors were thought incapable of properly assessing public utilities) and to provide the simplest administrative scheme of assessment.¹⁴

With California facing a major financial crisis following the Great Depression, the voters approved a constitutional amendment eliminating the gross receipts tax for public utilities, and substituting a program of central property taxation of public utilities by the Board of Equalization and returning property values of public utilities to the local roll.¹⁵ Prior to 1958 the Board assessed public utility property at 50% of full cash value, while local assessment was set at 25%.¹⁶ Although, assessed values were equalized between state and locally assessed properties by the early 1970's (at 25% of full value), it wasn't until after the passage of Proposition 13 that public utility properties were assessed at full cash value on an annual basis.¹⁷

Since California first began using the ad valorem property tax, but before the passage of Proposition 13, local government set the property tax rate based upon the budgeted revenue needs from year to year. Particular attention was paid to the funding needs of local schools which depended on property taxes for more than 50% of their funding.¹⁸ In *Serrano v. Priest*¹⁹, the California Supreme Court held the local school financing system was unconstitutional because a child's educational opportunity was predicated on the local property wealth, or lack thereof, of his or her school. *Serrano* required the state to ameliorate these disparities in local school funding.²⁰

During the early 1970's, California faced a severe recession which was followed by rapidly rising inflation. The "one-two punch" stagnated personal income while sending property values skyrocketing, forcing some from their homes for their inability to pay the tax collector.²¹ Instead of adjusting rates to reflect

inordinate values, local government soaked up the additional revenue and increased spending. A ground swell of taxpayer discontent culminated in the landmark passage of Proposition 13 in 1978.²² Proposition 13 had three primary elements: (1) it limited ad valorem property tax rates to one percent of value (except that the one percent rate does not apply to interest and debt approved by a 2/3 vote);²³ (2) rolled back assessed property values to 1975-76 levels;²⁴ and (3) limited the annual growth in assessed value to a maximum two percent, and allowed reassessment at full fair market value only upon a change in ownership or new construction.²⁵

In *ITT World Communications, Inc., v. City and County of San Francisco*²⁶ the Supreme Court of California ruled that the “valuation rollback” of Proposition 13, along with the annual two percent cap on growth in assessed value, did not apply to state assessed property.²⁷ As a result, California’s system of property taxation is generally segmented into those who are state assessed, subject to annual market valuation, and those who are locally assessed and afforded Proposition 13 protection.

3. *Current Property Taxation in California*

Article XIII, § 1 of the California Constitution, affirms the power to tax all forms of property, except where prohibited by federal law (e.g. federal land) and property specifically exempted from taxation in Article XIII, §§ 2 and 3.²⁸ The California Constitution, Article XIII, § 2, grants the legislature the power to tax tangible personal property and *enumerated* intangible personal properties. “[I]t does not grant power to provide for the taxation of intangible assets other than those listed.”²⁹ The legislature has exempted all of the listed forms of intangible personal property from property taxation.³⁰

Article XIII, § 1 mandates that all property subject to taxation be assessed at the same percentage of market value. The second sentence of subsection (a) recognizes that value standards other than market value may be imposed by the constitution, such as are utilized in several of the other sections. Proposition 13, for example, uses trended acquisition value, rather than fair market value as the value.³¹

Section 3 of Article XIII requires specific exemptions from taxation for categories of both real and personal property. A “homeowners” exemption, up to a maximum of \$7,000 of full assessed value is established in subsection (k) for

owner occupied dwellings that do not receive other exemptions. Unlike other exemptions the State reimburses local governments for the loss of property tax revenue due to the homeowner's exemption.³²

a) State-Assessed Property

Article XIII, Section 19 provides that the Board of Equalization shall annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and (2) property, except franchises,³³ *owned or used by regulated* railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity (emphasis added).

Traditionally, the BOE has interpreted Section 19 to require state assessment for those telephone companies classified as public utilities under either state or federal law.³⁴ A telephone public utility under California law is one which is issued a certificate of public convenience and necessity by the P.U.C.³⁵ To define "telephone company" the BOE has historically relied on the Public Utilities Code which defines a telephone corporation as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation in this state."³⁶ Telephone line is defined as "all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled or operated or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires."³⁷ BOE staff additionally cites rules of constitutional construction to support the broad interpretation of the word "telephone" as used in Section 19 of Article XIII.³⁸ With the exception of paging services, which were granted a specific exemption in 1995,³⁹ every company providing access to the public switched telephone network is a state assessee.⁴⁰

For companies that engage in activities in addition to those identified in Section 19 Article XIII, the question arises whether their non-public utility business will be subject to state assessment. By its own interpretation, the BOE has historically assessed all of the property owned or used by public utility companies,⁴¹ although the properties will be segregated into unitary and nonunitary properties.⁴² If for example, a cable television company begins providing telephone service as a public utility under either state or federal law, the BOE will assert jurisdiction to assess all property owned or used by such companies unless the assets not otherwise subject to state assessment are separated into another corporate entity.

For state assessed property, the Board sets the value of utility property held on January 1, after it has heard presentations by state assessees and its own valuation staff.⁴³ Valuation must occur on or before June 1. In setting these values, the Board uses the principle of unit valuation: it determines the value of the property as a going concern.⁴⁴ Once the Board has set values for state assessed properties, Board staff allocates those values among the local taxing jurisdictions and a roll is prepared showing the public utility property assessments situated each local tax rate area.⁴⁵ In accordance with the principle of unit valuation, state assessments do not represent the value of the assets situated within any given jurisdiction, rather, they represent the share of the value of the property as a whole that the Board has determined should equitably be allocated to the jurisdiction. Each county tax collector subjects the property assessed to taxation at the rate fixed in its jurisdiction. Under Proposition 13 this rate cannot exceed one percent (except for payment of bonded indebtedness approved by a 2/3 vote).

b) Valuation

One of the BOE's constitutional requirements is to uniformly determine the fair market value of property for state assessees.⁴⁶ Because the state does not have the power to tax intangible assets other than those specifically identified in the Constitution,⁴⁷ the Board also has the responsibility to ensure that intangible assets held by the utilities they value are not inadvertently subjected to taxation. This was reaffirmed in *GTE Sprint Communications Corp. v. County of Alameda*⁴⁸ where the court held the Board's valuation methodology was invalid because it did not satisfactorily account for the value of Sprint's intangible assets in appraising the value of the taxable tangible property.

Fair market value is defined as the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions where neither buyer nor seller could take advantage of each others exigencies.⁴⁹ Buyer and seller must have knowledge of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the foreseeable restrictions upon those uses and purposes.⁵⁰

The Board *may*, and currently does, use the principle of unit valuation in valuing properties that are operated as a unit in a primary function of the assessee.⁵¹ Unit valuation appraises property of a company as an operating unit rather than by valuing tangible assets separately and adding the resulting values together (known as the summation approach).⁵² The unit method is intended to ascertain the value of all state assessee property on the assumption that the value of an

individual item of property as part of a system of assets (the unit) is more valuable than the asset alone.⁵³ While the BOE is prohibited from taxing intangible assets, the courts have allowed the presence of intangible assets to be taken into account when valuing taxable property.⁵⁴ As a result, for state assessees, the debate with BOE staff focuses on whether the valuation of taxable tangible assets merely recognized the presence of intangible assets or improperly included the value of non taxable intangibles.

The complexity of this process is compounded by the BOE's use of the capitalized earnings approach (CEA) method and occasionally the stock and debt method to value property. Under the CEA approach, the value of property is equal to the present worth of anticipated future earnings from the property.⁵⁵ The present worth depends upon the size, shape, and duration of the estimated income stream and upon the capitalization rate at which future income discounted to its present worth.⁵⁶ Under the stock and debt method, property is valued at the prices at which fractional interests in the property or comparable properties have recently sold, and the extent to which such prices would have been increased had there been no prior claims on the assets.⁵⁷

Therein lies the debate. The unit method of valuation in reality taxes the enterprise value of a business, not the value of the property the enterprise owns or uses. In combination with the capitalized earnings approach or the stock and debt method of valuation, state assessment includes the value of various intangible assets such as contractual rights, goodwill, customer base, licenses, and going concern value (among others) in contravention of the law. The state assessee is faced with a myriad of "judgment" decisions by the BOE, any one of which could substantially alter their ultimate tax liability. Whether one agrees with the philosophy or legality of this method for valuing property of state assessees, the fact remains that it is expensive to administer for the taxpayer as well as for the state, both of whom spend hundreds of thousands of dollars litigating their disputes in court.

c) Locally-Assessed Property

All property not state assessed is assessed by the county wherein the particular property is located.⁵⁸ As illustrated in Table A-2, state assessed property accounts for less than 5% of the total property values in California. The central feature of locally assessed property is Proposition 13, which limits the rate of ad valorem property taxes to one percent; limits annual increased valuation of *real* property to two percent, unless sold or newly constructed; and rolled back values for real

property from 1978 to 1975 levels.⁵⁹ Proposition 13 does not apply to the assessment of personal property⁶⁰ except in the application of the one percent rate cap of the ad valorem tax⁶¹ nor does Proposition 13 restrict the use of benefit assessments (also known as special assessments).⁶²

Every County Assessor is required to assess property subject to general property taxation at its 'full value' based on a March 1 lien date (this changes to January 1 starting in 1997).⁶³ For locally assessed *real* property (including possessory interests), full value is defined as the value on the 1975-76 roll, or thereafter, the value when purchased, newly constructed, or a change in ownership occurs.⁶⁴

Unlike state assessees, the locally assessed cable companies are protected from increases in value of their real property to 2%. Because Proposition 13 provides no protection to the personal property of a business, annual market valuation is required which has often been criticized as too costly to administer in proportion to the amount of taxes collected.

d) Possessory Interests

Included within the definition of real property is the right to possession of land, more commonly known as a possessory interest.⁶⁵ A possessory interest is defined as "[p]ossession of, claim to or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person."⁶⁶ A possessory interest is subject to taxation when the underlying fee simple is nontaxable publicly owned real property.⁶⁷ The value of a taxpayer's possessory interest in tax exempt public land has always been recognized as taxable real property in California.⁶⁸ If a taxable possessory interest is determined to exist, the value of the interest is taxed as real property.⁶⁹ If the possessory interest is held by a state assessee, the possessory interest is assessed at fair market value on an annual basis like all other real property.⁷⁰ For locally assessed taxpayers, possessory interests are valued on a acquisition basis under Proposition 13.

The definition of what is a possessory interest subject to assessment has been the topic of much recent litigation.⁷¹ For a possessory interest tax to be valid, the right of possession in the property must be independent, durable and exclusive of rights held by others in the property.⁷² The parameters of exclusivity have been recently stretched to the point having no relationship to the plain meaning of the word.⁷³ As a result, "a valuable and taxable possessory interest may be found in virtually any situation where a private citizen is allowed to use public property

for personal gain.”⁷⁴ While this misguided interpretation and the litigation it has spawned could have severe implications for use of public property for commercial gain (including the highways), for the telecommunications industry, taxation of possessory interests are another example of discriminatory tax treatment among the telecommunications carriers.

As will be discussed in Section D below, an unavoidable consequence of providing cable television and electric service to customers is the stringing of cable or placing of wires below the surface to connect to the consumers place of consumption. Stringing wires or laying cables requires the company to obtain a franchise from local government for the right to use the public right of way.⁷⁵ Although local government has the authority to extract a fee from the cable television and electric companies for the granting of such a franchise, the right to use the public streets to lay cables also constitutes a taxable possessory interest.⁷⁶ The portion of the franchise granting the right to charge a fee to subscribers for their use of cable facilities, although a nontaxable intangible asset, is “considered” when valuing the use of the public right of way.⁷⁷ The value of the use is measured by capitalizing the amount of the franchise payment over the term of possession.⁷⁸ For cable television companies, the possessory interest is valued on an acquisition basis and protected from annual rises in value under Proposition 13. Because electric companies are state assesses, their possessory interests are valued annually at market on a unit basis.

Although the telephone companies use public rights of way in the same manner as cable television companies to provide service to their customers their use is not subject to valuation and taxation as a possessory interest. Because the use of the public rights of way by the telephone companies constitutes a state franchise that is not subject to local franchise agreements or the payment of the local franchise fee,⁷⁹ the value of their use is considered zero.

It is entirely unclear whether cable television companies will be afforded this favorable tax treatment when local exchange service is provided and if so how such a rule would be administered given that local exchange services will be transmitted over the same channel as cable television service. In like fashion, the potential loss of the state franchise for the telephone carriers providing cable television service and the resulting increase in their overall tax burden impair the telephone carrier’s ability to compete in the cable television market. Like the cable television companies, the burden of administering a tax which fluctuates based upon the type of service delivered through the same channel causes concern. The

result will be, a slower transition to competition, higher prices to the consumer, and sluggish development of the information superhighway.

4. *Revenue Allocation*

a) *State Assessed Property*

Although the BOE has the responsibility for setting values of state assessed property, the actual levy of property taxes remains in the hands of the county tax collector. The BOE must allocate a portion of each state assessee's unit value to each county. While inconsistent with the concept of unit valuation, the BOE has historically allocated the unit value of each state assessee to counties in proportion to the value of the company's property with situs to that county based upon the reproduction cost new less depreciation approach (RCNLD). With the modernization of the Board's computer system, this method of allocation will be divided into two segments: (1) major assessees (approximately 10 in number) and (2) all others. The major assessee values will continue to be allocated to counties based on the replacement cost new less depreciation (RCNLD) method while the other state assessee values will be allocated on a historical cost less depreciation (HCLD) basis. A total switch to historical cost was avoided because of the likelihood of altering allocations among counties.

b) *Locally And State Assessed Property on Local Roll*

The passage of Proposition 13 had an immediate and dramatic impact on local government revenues by reducing the local tax base by nearly \$7 billion.⁸⁰ To offset this loss, the state provided \$4.3 billion in local assistance (supplied from a general fund surplus of \$3.7 billion)⁸¹ in the form of block grants and state assumption of the Social Security Income-State Supplemental Program (SSI-SSP), Medi-Cal, and AFDC programs.

In an attempt to provide a long term solution to the revenue loss at the local level, the legislature passed and the governor signed Assembly Bill 8 (AB 8).⁸² AB 8 created a permanent formula for determining property tax revenues to be received by local agencies and schools. AB 8 also provided local governments additional bail out moneys. The tax revenues were to be divided by the counties in accordance with the formula and distributed to the schools, cities, special districts and counties. The AB 8 formula established a baseline revenue amount for all local agencies based upon the property tax revenue they received for 1978/79 year and a portion of the state assistance amount they received.⁸³ The

baseline amount for schools was also based upon the property tax revenue they received for the 1978/79 year, but were reduced proportionately by the amount of “state assistance” given to local agencies.

AB 8 also established a procedure for determining how growth in local assessed value would be shared by local agencies and schools. This procedure established a percentage for each entity for computing their share of growth in each geographic area (tax rate area) in which they provide services. Each year, the growth is computed for each tax rate area and divided among the entities serving that area. The growth for each tax rate area is then totaled for each entity and added to their base (prior year) revenue to determine the current property tax revenue available to each local agency and school. New jurisdictions are required to go through the Local Agency Formation Commission (LAFCO) to determine their share of the County’s allocated property tax revenue.

In 1992, the State redirected \$1.3 billion in property tax revenues from the cities, counties, special districts and redevelopment agencies to help fund schools.⁸⁴ In 1993-94, the State redirected an additional \$2.6 billion from local governments to schools, effectively reversing the Proposition 13 bail out revenue provided in 1978 and 1979.⁸⁵ Challenges by local governments and taxpayers to these reallocations of property tax revenues proved fruitless.⁸⁶

5. Data Collected

The estimates for the property tax revenues contributed by the telecommunications industry to local budgets proved the most complex of the four categories of tax to compile. Given that there are more than 6,500 distinct entities of government that are effected by the property tax, attempting to compile actual property tax contributions attributed only to telecommunications companies would have been impossible. Relying on actual payments or collection by local government invariably requires estimating delinquencies, bad debts, and off year payments. To ensure that the estimates were based on the likely taxes owed by the telecommunications industry, an average property tax rate has been calculated and applied to the assessed value allocated to each county.

a) Assessed Values

For state assessees, compiling assessed values was uncomplicated as the annual assessed value data for each state assessee was readily available from Board records. The only obstacle was establishing the allocation of each company’s

assessed value to each county. Board staff was able to provide industry level allocation amounts for each county.

The major difficulty faced in the development of this report has been collecting assessed values for the cable industry. Because cable companies are locally assessed, collecting this data required contacting every county assessor for the information. This effort proved to be more difficult than anticipated. As a result, valuation estimates reflect a compilation of data from both county assessors and individual cable companies.

b) Property Tax Rate

Although Proposition 13 generally limits local property tax rates to one percent of value, the rate can be increased for certain types of voter approved debt. As a result, the property tax rate within a county, let alone the state, is not a uniform one percent. Property tax revenue contributed by the telecommunications companies would be understated if a simple one percent rate was applied to telecommunications assessed values. Fortunately, the Board's annual report lists each county's average property tax rate by fiscal year. The Board's annual valuation process also collects from each state assessee, the amount of property taxes actually paid on an annual basis and summarizes the percentage of the taxes paid to the value of that industry's assets. Applying this industry average property tax rate to the value of assets allocated to each level of local government provides an added barometer to the contributions of the telecommunications companies to local government.

Table A-2 of illustrates the statewide impact of the telecommunications industry on property tax revenues.

D. FRANCHISE FEES.

1. Overview

Franchise Fees are paid to local governments by cable television and energy companies both for the privilege to engage in a specialized business (on an exclusive or non-exclusive basis) and payment for use of public property (ostensibly to lay cable or string lines). The Federal Government has capped cable franchise fees at 5% of gross receipts.⁸⁷ For gas and electric companies, California has enacted a pair of complicated formula known as the Broughton Act and the Franchise Act of 1937 that work together to vary franchise fee payments between

½% - 2% of gross receipts.⁸⁸ Franchise fees are a substantial impediment to the development of an advanced information network for the following reasons:

- For utility companies, franchise fees must be negotiated with each charter city where a company intends to provide service. Cable television companies must negotiate separate franchise agreements with every city in which they wish to operate. This is a substantial administrative cost to both the cable company and local government agencies.
- For cable companies, there is no guarantee that similarly situated cable companies will be paying a proportionate amount of franchise fees. Federal and state law merely cap the maximum amount which may be charged.
- Telephone companies are currently under a state franchise for construction of "telephone lines" that requires no annual fee payment. Local governments argue that this exemption does not apply to a telephone company providing video programming. How this dichotomy can be rationally applied in a digital world remains to be seen.
- Franchise fees are not currently paid by wireless television companies. As technology advances to permit wireless operators to provide more and more channels of video programming (estimates are between 100 and 150 channels by mid 1996) the lack of franchise fee payments skews their competitive advantage over cable television.
- As the new PCS (personal communications services) system comes on line, existing telephone companies may be in a position to attach PCS cells on existing rights of way, while existing cellular companies are forced to rent private property or pay franchise fees to local governments for locating their cell sites. Here again, tax policy provides one technology a competitive advantage over another -- skewing choices that should be left to the market.

FRANCHISE FEE REVENUES (FY 1993-94)	
(in millions of dollars)	
Cable Television	\$ 109.42
Gas and Electric	219.84
<i>Total</i>	<i>\$ 329.26</i>

The franchise fee data was collected by calling every city and county in California and requesting a written response with the information. By and large, the cities were extremely cooperative. Because some cities were unable to breakdown

franchises collected between gas and electric, it was necessary to solicit the assistance of the electric companies to provide the breakdown.

2. Background

The term “franchise” can generally be broken down into two primary uses: A “general” or “corporate” franchise and a “special franchise”. A general franchise refers to the charter of a corporation or the right, granted by government, to exist and do business and exercise the rights and powers incidental to that form of organization or necessarily implied by the grant.⁸⁹ The general or corporate franchise is an intangible asset to the business and subject only to state taxation under the Bank and Corporation Franchise Tax.⁹⁰

A “special franchise” is generally referred to as one that confers upon the recipient a special privilege to do certain things not belonging to citizens generally of common right.⁹¹ Such a special franchise would include both the right to engage in a specialized business (for example providing cable television service, which is an intangible right)⁹² as well as the right to use public property (for example, to dig trenches in public roads to place cable, which is in the nature of a possessory interest in land).⁹³ Senate Bill 657 (Stat. 1995 c. 498) authored by Senator Ken Maddy affirms that only this latter element is subject to property taxation.⁹⁴

It is well settled that the vested rights of an individual or corporation under an executed franchise are contractual and that such rights cannot be impaired by subsequent action of government under Article I, Section 10 of the U.S. Constitution (the Contracts Clause).⁹⁵ The power to *grant* franchises to use the streets and highways for secondary purposes such as lay cables and pipelines is a police power of the State⁹⁶ although it has generally been delegated to local governments.⁹⁷ The Contracts Clause does not inhibit the waiver or modification of any rights accruing to entities of the state in their governmental capacity by statutory actions or constitutional amendment.⁹⁸

These general rules have three main exceptions. First, statutory control over franchises must cede to a charter city’s plenary power in making and enforcing ordinances and regulations with respect to its “municipal affairs.”⁹⁹ Counties, as legal subdivisions of the state,¹⁰⁰ and general law cities must conform to the general laws of the state, even with respect to what might otherwise be deemed a municipal affair.¹⁰¹

Secondly, the State has by statute authorized the construction and maintenance of telephone lines in the streets and highways and other public places in the state which constituted an offer of state franchise pre-empting local control.¹⁰²

Finally, with respect to franchises for cable television service¹⁰³ the federal government has preempted local control through the *Cable Television Consumer Protection and Competition Act of 1992*.¹⁰⁴ Among other things, the Act requires any business providing cable television service to obtain a franchise and limits the fees attached to that franchise to 5% of the cable television company's gross receipts.¹⁰⁵

3. *Municipal Affairs*

Article XI, Section 3 of the California Constitution provides the power for any city to adopt a charter by a majority vote of its electors creating a specialized and unique governing document controlling the cities activities. Section 5 of Article XI provides that any city charter adopted in accordance with the Constitution shall supersede all laws inconsistent therewith in respect to municipal affairs. As long as a local ordinance is passed in conformity with the city's charter and does not conflict with the State or Federal Constitutions, the fact that it conflicts with the general laws of the State will have no bearing if the ordinance relates to the municipal affairs of the city.¹⁰⁶ The California Constitution does not define what constitutes a municipal affair, as opposed to a statewide concern. As a result, the courts must decide this issue on a case-by-case basis.¹⁰⁷ What constitutes a municipal affair "must be answered in light of the facts and circumstances surrounding each case."¹⁰⁸ As stated by the California Supreme Court, "'municipal affair' and 'statewide concern' represent, Janus-like, ultimate legal conclusions rather than factual descriptions. Their inherent ambiguity masks the difficult but inescapable duty of the court to, in the words of one authoritative commentator, 'allocate the governmental powers under consideration in the most sensible and appropriate fashion as between local and state legislative bodies.'" ¹⁰⁹ What may at one time have been a matter of local concern or municipal affair may later become a matter of statewide concern subject to control by the general laws of the state.¹¹⁰

The Cable Rate Deregulation Act¹¹¹ which outlines the manner of local cable regulation and franchising has been held to be a matter of statewide concern.¹¹² Similarly, in 1954 the California Supreme Court concluded that the state grant of franchise to telephone companies by statutory enactment was a matter of

statewide concern and could not be altered by local governments.¹¹³ With respect to gas and electric franchises, because the general law expressly allows chartered cities to use either their own franchising provisions or those found in the Franchise Act of 1937,¹¹⁴ the question of whether granting a franchise to gas and electric companies is a matter of statewide or municipal concern has not been decided.¹¹⁵

4. *Franchises of Public Utilities*

State law confers on counties and general law cities the power to grant franchises to public utilities for the privilege of using local streets and other public property¹¹⁶ excepting telephone public utilities.¹¹⁷ The procedures for granting such franchises, and the amount of fees that can be collected, are outlined under the Broughton Act¹¹⁸ and the Franchise Act of 1937.¹¹⁹ The Broughton Act relates to franchises of public utilities generally and applies to cities and counties.¹²⁰ Under the Broughton Act, a public utility pays 2% of the company's gross receipts "arising from the use, operation or possession of the franchise." The Franchise Act of 1937 is a procedure *alternative* to that of the Broughton Act that may be employed by a county (in unincorporated areas) or a general law city.¹²¹ Like the Broughton Act, the Franchise Act restricts collections to 2% of gross annual receipts, but includes a minimum fee of ½% of gross annual receipts for electrical franchises or 1% of the gross annual receipts for gas or water franchises operating within the city limits. The franchise fee is based on the number of miles of pipes or wires in the franchising authority and the gross receipts system wide.

Neither the Broughton Act nor the 1937 Act applies to a charter city which can negotiate its own terms to a franchise agreement.¹²² There are approximately 90 charter cities.¹²³ Although chartered cities are not covered by the Broughton Act or the 1937 Act, many use the Broughton Act formula to calculate their franchise fees.

The ability of local government to negotiate with the utilities, whether under state statutory limitations or under city charter, has been a double edged sword. While free to set their own terms, and possibly the rate for charter cities, many existing franchise agreements were negotiated decades ago to exist in *perpetuity*. Some local governments have recently filed suit challenging the basis of these contracts in the hopes of having the court strike the perpetuity aspect of the agreement and permit renegotiation.¹²⁴ Should such a suit succeed, utilities could be liable for as

much as \$200 million in back payments and an additional \$32 million a year in higher fees.¹²⁵

5. *Franchises for Cable Television*

Congress passed the Cable Communications Policy Act of 1984 in order to “provide and delineate within Federal legislation the authority of Federal, state and local governments to regulate cable systems.”¹²⁶ In 1992, Congress amended the 1984 Act into the Cable Television Consumer Protection and Competition Act (Cable Act).¹²⁷ The Act authorizes franchising authorities, as the agency empowered to regulate cable television services within its jurisdiction, to impose a franchise fee of up to 5% of gross receipts¹²⁸ and provides that no company may provide cable service¹²⁹ without acquiring a franchise.¹³⁰

The California Cable Rate Deregulation Act¹³¹ delegates to cities and counties the franchising authority over cable companies by providing that “cities and counties may charge a maximum fee of 5% of a company’s gross receipts from operations within that city or in connection with the operation of a community antenna television system.”¹³² The regulation and franchising of cable television systems has been declared an issue of statewide concern which restricts the authority of charter cities to act in contravention of state statute.¹³³

Neither does the federal statute appear to restrict the state’s authority to alter the franchising arrangements for cable television companies.¹³⁴ A central purpose of the Cable Act was to empower the franchising authority to regulate cable television services within its jurisdiction.¹³⁵ Although the franchise fee allows the franchising authority to carry out the regulatory function provided for in the Cable Act, so long as state action does not eliminate the franchising authority’s ability to fulfill this goal (by ensuring continued revenue to local governments for that purpose), the Cable Act should not be an obstacle to statewide action.

6. *Telephone Franchises*

The most noted aspect of telephone franchises is that they are nonexistent. The state has reserved the power of granting of franchises to telephone companies in exchange for the telephone company’s acceptance of the duty to furnish proper and adequate communication service to the public under the regulatory auspices of the Public Utilities Commission.¹³⁶ Although the Supreme Court in 1955 ruled that the state franchise did not discriminate against the type of information transmitted by electronic means over the telephone line,¹³⁷ the federal Cable Act

prohibits providing “cable services” without a franchise.¹³⁸ Furthermore, there is currently a ban on cross-ownership between the local exchange carriers and cable businesses. Recent rulings by the Federal Communications Commission permit the telephone companies to provide “video-dialtone” services on a common carrier basis.¹³⁹ For the telephone companies this really is no more than an enlightened review of existing common carrier status. The telephone companies will not be able to participate in the actual services provided, only provide the “pipeline” for their delivery.

The proposed “deregulation” currently pending before Congress, while removing the local exchange carriers impediment to providing cable services, would require that local governments impose franchises on a nondiscriminatory basis to any business providing cable services.¹⁴⁰

7. *Wireless Communications*

The wireless industry (cellular, PCS, wireless cable, direct broadcast satellite, paging and mobile radio telephone, and broadcast television) make use of radio signals (the radio frequency spectrum or spectrum) rather than land based wire cables to transmit information services. The allocation and use of the spectrum for radio communications (ownership of spectrum is prohibited and license for use may be revoked) is regulated exclusively by the federal government through the Federal Communications Commission (FCC)¹⁴¹ for which a regulatory fee is charged in an amount sufficient to offset the costs of that regulation.¹⁴² The regulatory fee is not unique to the wireless industry and is also paid by the local exchange, inter-exchange and cable industries for federal regulation of their industries.¹⁴³

Historically, the allocation of spectrum (where conflicting licensing applications existed) was accomplished through a hearing process¹⁴⁴ or lotteries.¹⁴⁵ Both of these processes have come under increased scrutiny in recent years because they were inefficient in their allocation of spectrum and did not create an incentive for putting the spectrum allocation to its best economic use. With the adoption of the Omnibus Budget Reconciliation Act of 1993¹⁴⁶, the FCC has been granted for the first time, the authority to auction new licenses for use of the spectrum through a competitive bidding process.¹⁴⁷ The revenues in excess of the FCC’s costs for implementing the competitive bidding process will be deposited in the U.S. Treasury for general use.¹⁴⁸ The process has been projected to raise over \$10 billion in revenue over the next five years.¹⁴⁹

Because the federal government has preempted local regulation of the use and allocation of the spectrum, any charge for its use, akin to a franchise fee for use of the public rights of way on land line cable television, would be prohibited.¹⁵⁰ This does not speak to the imposition of special franchises for erecting the towers or poles necessary for the wireless communications network to operate. The use of the public rights of way for radio towers may be subject to local franchises. This could create an impediment to competition among the cellular and PCS systems, should the local exchange carriers, who have invested in PCS licenses, be permitted to attach radio towers to their existing franchises which are not subject to franchise payments. While wire communications pay a similar regulatory fee to the FCC, the imposition by local government of a franchise fee on wire communications skews the competitive advantages in favor of wireless communications. Given that the available spectrum is limited in capacity and wire-line communications capacity is virtually limitless, the continued discriminatory treatment seems clearly contrary to the public interest.

8. *Data Collected*

The collection of franchise fees was the most labor intensive data to collect. Every city and county in the state, totaling more than 530, was called to request a compilation of franchise fee revenue for cable, gas, and electric companies. Although some cities were unable to break down their collections between gas and electric where they were provided by the same company, industry representatives were able to supplant the cities' information and provide the separate franchise amounts.

E. GROSS REVENUES.

Gross revenues were taken from annual reports filed with the Board of Equalization for each state assessee. There were a few instances in which a state assessee did not file a report with the Board but none the less had assessed property value attributed to the company. These companies were concentrated in the paging and long distance industries. In an effort not to understate the gross receipts of those companies, revenues were estimated by using the average percentage of property value as a percentage of gross receipts and working backwards. The estimate amounted to a total of \$45 million or less than one-tenth of one percent of the total.

Determining the gross revenues of cable companies proved more difficult. In the end, three different methods were used to estimate cable television revenues which were then averaged to arrive at a gross receipts estimate. The first method uses published estimates of subscribers and revenue per subscriber (this was the lowest estimate of revenues). The second method estimates total revenues by using a large county's average franchise rate. Because the franchise fee is already a percentage of gross revenue, using an average rate would give an estimate of gross revenues on a statewide basis. The third method uses the city and county of San Francisco to estimate revenue per subscriber. Because San Francisco has been represented primarily by one cable company it was possible, using the total franchise fees collected and the franchise rate to determine a gross revenue within the franchise area. Applying this gross revenue to the number of known subscribers resulted in an estimated revenue per subscriber which was then extrapolated statewide. Using the three different methods resulted in a variance of from the total revenues for all telecommunications companies of less than 1%.

ESTIMATED GROSS REVENUES (FY 1993-94)	
(in millions of dollars)	
Local Exchange	\$ 14,195.30
Inter-Exchange	6,342.04
Cellular	2,080.92
Paging and Mobile Radio	372.63
Cable Television	2,393.95
Gas and Electric	21,430.33
<i>Total</i>	<i>\$ 46,815.17</i>

F. IN LIEU RATE.

The in-lieu rate is intended to replace existing revenue to local governments generated from property taxes and franchise fees. The ultimate in-lieu rate depends upon the choices which are made as to what industries will be included. In particular, the rate will fluctuate substantially depending on whether the Gas and Electric companies are included within a single in-lieu rate structure, separated as a distinct rate, or excluded altogether. Each possibility has its own set of advantages and disadvantages.

For purposes of this analysis, industry revenues for the year 1993 are compared to property taxes paid to local governments for the 1993-94 fiscal year. The process of property valuation and taxation begins with the January 1 lien date. The value of a company's property is set during the summer following the lien date. For property on hand January 1 of 1993, the values are set in the summer of 1993. Those values are added to the 1993 roll and are the basis for the fall and spring property tax payments. As a result, the value of property as of the January 1 lien date reflects the value of property at the end of the previous year but is paid from cash flows for the following year. This report compares 1993 company revenues to 1993 assessed values as well as 1993-94 franchise fee payments and so forth.

The data collected illustrates that an in-lieu rate which applies only to the telephone and cable companies will approach 1.8% of gross receipts. Adding electric companies (including companies that provide both gas and electric) but not gas or gas franchises, raises the rate to approximately 2.3%. Separating the electric companies for their own rate, increases the rate to 2.9%.

G. UTILITY USER TAX.

The utility user tax is a local general tax added to the utility bills of residential and commercial utility users. Referred to as a "pass-through" tax, it is paid by the consumer of the utility service based on a percentage of the amount of service supplied. First used in 1967 by the City of Los Angeles, the Utility User Tax has since mushroomed in use by local governments, now used by more than 170 cities and eight counties, and supplies more than \$1 billion in revenue to local governments statewide. An excessive utility user tax has a disproportionate impact on the poor not only because it taxes basic necessities, but also discourages job growth. Industries such as manufacturing and data clearinghouses that provide many non-skilled or semi-skilled jobs are reluctant to locate in high tax jurisdictions because of the competitive disadvantage they are faced with having a high utility tax. Because the utility tax in one jurisdiction is entirely unique from that imposed in another jurisdiction, the administrative burden on the statewide telecommunications industry is enormous.

For *charter* cities, the authority to impose a utility user tax comes from the municipal affairs doctrine in Article XI, Section 5 of the California Constitution, which grants municipalities the power to "make and enforce all ordinances and regulations in respect to their municipal affairs, subject only to restrictions and

limitations provided in their several charters.” There is no other restriction on the rate of the tax that may be imposed or the method by which it may be imposed.

Until 1982, general law cities lacked the statutory authority to impose a utility user tax. In the Budget Act of 1982, the State granted general law cities the power to “levy any tax which may be levied by any charter city.”¹⁵¹ Seen largely as a method for local governments to recoup taxes lost after the passage of Proposition 13, total utility tax revenues have skyrocketed statewide since authority was given to the general law cities to impose this tax outpacing inflation by 300%.¹⁵²

Not to be left out, Counties in 1990 were successful in securing language in the annual budget battle permitting them to levy utility user taxes. Counties can only impose utility taxes in unincorporated areas.

The proliferation of this tax to some degree is based on the ability of local governments to impose this tax or raise the rates thereof, without a vote of the people. Despite the voters passage of Proposition 62 in 1986, which required all taxes used for general fund purposes be subject to a majority voter approval, it was believed that passage of a utility user tax did not require a vote of the people. With the Supreme Court’s decision in *Santa Clara County Local Transp. Auth. v. Guardino* (September 28, 1995), 11 Cal.4th 220, 902 P.2d 225, 45 Cal.Rptr.2d 207, all that has changed. It now appears that pursuant to Proposition 62,¹⁵³ any *general law* city or county must subject a utility tax enacted or raised to a majority vote of the people. It is unclear what impact this decision will have on those taxes imposed after passage of Proposition 62 without a majority voter approval but before the court’s decision in *Santa Clara*.

Unknown to most, the utility users tax is imposed upon telephone services (including long distance, cellular and ostensibly any other “telephone service”), water, sewer, gas, electric and cable television services.¹⁵⁴ The tax rate need not be consistent between services.

The unfortunate reality of this type of consumption tax is that it is extremely regressive; it taxes a basic necessity effecting the poorest in our neighborhoods most severely. Compounding this problem, in the commercial sector the utility user tax disproportionately effects manufacturers and data clearing houses who tend to consume greater amounts of electricity and telephone services. These employers are most likely to supply the type of higher wage jobs most coveted in low income communities. Because this tax disproportionately burdens

manufacturers, high utility tax jurisdictions tend to be avoided by these large employers, precisely where the jobs are most needed.

The utility tax is also a substantial administrative burden. Utility companies are faced with implementing a utility user tax ordinance which may cap the amount a single taxpayer must pay, may apply different rates to different types of taxpayers or may provide exemptions based upon the taxpayers income. The burden of determining the situs of a particular taxpayer or transaction can create a substantial administrative burden and place the utility companies in the middle of disputes between competing cities over the proper remittance of the tax. Perhaps most burdensome is that these variables are constantly subject to change and can vary in combination among the 170-plus jurisdictions which impose the utility tax. This means to a substantial increase in the cost of administering this tax system which in turn drives up the cost of utility services to the consumer.

Because the telecommunications provider may be the conduit for charging the customer for services provided by another company but funneled through the telecommunications provider, there is the possibility these services or products will be taxed. Even assuming the product or service is exempted, the telecommunications provider will be responsible for allocating between those charges which are subject to the utility tax and those that are not without having any information on the nature of the transaction. Because the exemptions and limitations change from city to city and county to county, the costs of administration are enormous and drive up the cost of telecommunications services to the consumer.

1. *Data Collected*

Table B-1 illustrates total utility user tax revenues statewide. Because the utility user tax is a relatively new source of revenue for the Counties, no collections were reported in the 1992-93 and 1991-92 fiscal years. The utility user tax information was collected from the State Controller's office who annually compiles city and county financial data and publishes their findings in a report. The Controller's office reports the total amount of annual utility user tax collections as well as the rate imposed on utility services.

The effect of the eight percent cap on utility user tax collections is illustrated in Table B-2. Under the column 'Rate Cap' a simple formula was applied which

determined the revenues collected in excess of eight percent. The excess revenue is reported as a negative number, while no effect was reported as blank.

H. SURCHARGES.

Currently, telephone services are subject to five separate surcharges: Universal Lifeline Trust Fund Surcharge, High Cost Fund Surcharge, D.E.A.F. Fund Surcharge, Emergency Telephone Users Surcharge, and the P.U.C. Regulatory Fee. Electric customers pay a portion of the P.U.C. Regulatory Fee, and also pay the Low Income Ratepayer Assistance fee and the Energy Resources Surcharge. Each of these surcharges represents an interest to fund various social programs that are only tenuously related to the services upon which they are attached.

1. *Rural, Low-Income and Deaf Service Programs*

a) Introduction

Three existing programs are aimed at providing telephone service to those who cannot afford it: (1) Universal Lifeline Telephone Service (ULTS);¹⁵⁵ (2) California High Cost Fund (CHCF);¹⁵⁶ and (3) Deaf Equipment Acquisition Fund Trust (DEAF Trust).¹⁵⁷ The intent of these programs is to provide basic telephone service at affordable rates to rural, low income and/or disabled citizens throughout the state. Each of these distinct programs is funded by a separate “surcharge” on the users of telecommunications services, more commonly referred to as a pass-through tax. Together they generate more than \$500 million annually.

The current system of subsidized telephone service is premised on the existence of a single telephone service provider for each potential consumer as well as a traditional view of what constitutes telephone or telecommunications service. With the passage of Assembly Bill 3606 (AB 3606),¹⁵⁸ this is all about to change. AB 3606 codified the intent of the Legislature that all telecommunications markets subject to the jurisdiction of the Public Utilities Commission (PUC) be opened to competition no later than January 1, 1997. Accordingly, the legislature passed Assembly Bill 3643¹⁵⁹ that requires the PUC to initiate an investigation and open a proceeding to examine the current and future definitions of universal service in telecommunications. The PUC released proposed rules on July 17, 1995 for public comment and has scheduled numerous meetings around the state to discuss the future of universal service.¹⁶⁰

b) Background

In response to potential increases in telephone service costs due to the court ordered breakup of AT&T,¹⁶¹ the Legislature in 1983 passed the Moore Universal Telephone Service Act (Assembly Bill 1348).¹⁶² The Act mandated the institution of a subsidy program “to support the needy, invalid, elderly and rural customers vulnerable to increasing costs of telephone service.”¹⁶³ The implementation of the Moore Act by the PUC created three separate programs: (1) Universal Lifeline; (2) High Cost Fund, and (3) Deaf Equipment Acquisition Fund Trust. The passage of the Moore Act and its implementation by the PUC was more a codification of an existing program for Pacific Bell and GTE, who had for a number of years provided lifeline service subsidized by its other rate payers.¹⁶⁴

c) Universal Lifeline Trust Surcharge (ULTS)

The Moore Act authorized the PUC to set a tax of up to four percent on intrastate interLATA telecommunications and intraLATA telecommunications services. By Decision 84-04-053¹⁶⁵ the PUC established a four percent tax on interLATA services.

(1) Eligibility

The purpose of lifeline service was never intended to be a general use offering; “[i]t was intended to be a minimum service at a minimum justifiable monthly rate to serve those who had very limited calling requirements and who could not afford a higher priced service.”¹⁶⁶ In the original order establishing the ULTS program, the PUC established three criteria for eligibility: (a) the residence at which the service is requested is the principal place of residence in California for the applicant; (b) there is only one telephone line serving that residence, and (c) the total income of the applicant’s household does not exceed \$11,000. The PUC settled on “self-certification” subject to verification by the phone company for establishing eligibility. Self-certification relies heavily on the veracity of the applicant to ensure the proper use of ULTS funds. The arguments favoring self-certification largely involve the potential costs associated with the verifying income levels by applicants and the fear that such a verification process would deter those who might otherwise be eligible for the program from applying (the welfare stigma argument).

The federal government in 1983 established a similar program to the ULTS providing financial assistance to state governments for lifeline services.¹⁶⁷ As originally adopted, the federal act required state lifeline programs to be means

tested and *subject to verification*.¹⁶⁸ Under that portion of the federal program California continues to receive approximately \$50 million annually.

In 1987, the federal program was amended to substantially alter the requirements for a state to receive federal funding. Under the new guidelines, the criterion used to establish eligibility must be “a narrowly targeted telephone company lifeline assistance program, *requiring* verification of eligibility, implemented by the State or local telephone company” (emphasis added). Any such lifeline service plan must be submitted to and approved by the Secretary of the FCC. Despite the PUC being given the authority to establish the necessary procedures to ensure the ULTS qualified for these additional federal funds,¹⁶⁹ it chose not to seek the added federal funds because of the verification requirement.¹⁷⁰ As a result, it is estimated the State annually forgoes an additional \$50 million.

Similarly, the Moore Act was substantially amended in 1987¹⁷¹ to require the PUC to *annually* designate a class of universal telephone service necessary to meet minimum residential communications needs as well as annually establish the rate necessary to fund the program. Additionally, the former 4% tax (which was effectively built into the rate) was eliminated and replaced with an equivalent surcharge on intrastate interLATA tolls passed on to the customers.¹⁷² The rate base was expanded to include intraLATA tolls in 1988.¹⁷³

The 4% surcharge was increased to 6% in 1994 but dropped to 3% beginning January 1, 1995 when the PUC extended the rate base of the surcharge to include all intrastate telecommunications end-user services.¹⁷⁴

(2) *Service Characteristics*

The biggest debate facing universal service in the telecommunications revolution is over what services should be available on a lifeline basis. From the perspective of the PUC, what constitutes minimum access changes over time depends upon the advancement in use of a particular service and the cost of providing such service.¹⁷⁵ For example, touch tone, once considered a luxury, is now part of the lifeline cadre of services.¹⁷⁶ The original order establishing the set forth five basic aspects of lifeline service: (1) installation of telephone and one modular jack; (2) an allowance for an instrument (phone); (3) basic dial tone service; (4) unlimited incoming calls, and (5) either 30-60 calls per month where measured service is available or where not available, unlimited calling within the customer’s exchange area.

d) California High Cost Fund Surcharge (CHCF)

The CHCF was established in 1985¹⁷⁷ as a means of subsidizing reasonable basic exchange rates for the customers of smaller to mid-sized local exchange carriers. The rationale for CHCF was to provide customers of smaller independent LECs (Independent Telephone Companies or “ITCs”) with systemwide rate averaging benefits afforded to Pacific Bell’s rural customers by virtue of Pacific’s having sufficient market share to provide system wide rate averaging for their customers. CHCF, is basically a subsidy to all local exchange telephone companies other than Pacific Bell and GTE for the amount necessary to reduce their average rate below 150% of comparable California urban rates, except for presently authorized rates. The 150% of average urban rates functions as a benchmark for rate case standards, not a rigid requirement.¹⁷⁸

The funding of CHCF was derived from an increment added to the carrier common line charge (CCLC) of the LECs interLATA access tariffs, which was a per-minute charge for services rendered by local exchange carriers to interexchange carriers. The net effect was to bury this charge in long distance toll rates. The fund itself was managed by Pacific Bell.

The decision of the PUC to establish the CHCF was effectively codified by the Legislature with the addition of Section 739.3 of the Public Utilities Code which required the PUC to develop and implement “a suitable program to establish a fair and equitable local rate structure aided by transfer payments to small independent telephone corporations serving rural and small metropolitan areas. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies.” The intent of the legislature was expressed to require the PUC to develop a rate structure that did not impose rates greater than 50% more than the average rates paid by residential subscribers in urban areas.

The 1985 decision of the PUC provided that funding for an ITC would be considered only after a revenue requirement had been determined which was intended to “weed out” imprudently incurred costs. The PUC required rate case review as a prerequisite to CHCF funding in order to prevent the utilities from drawing unnecessarily from the fund. In 1988, the PUC recognized that it could not process all the rate filings of the independent telephone companies and permitted the utilities to draw from CHCF based on revenue reductions associated with certain regulatory changes and without rate case review.¹⁷⁹ To offset the potential of abuse, the decision implemented a phase-down of funding

over a three year period, ending in 1992. No further funding would be made available unless an ITC applied for rate case review. None of the ITCs applied for a rate review.

Unfortunately, the CHCF had some unintended consequences. Some utilities that had drawn from the fund realized rates of return substantially higher than those authorized by the PUC and interLATA rates actually increased because those rates supported the fund.¹⁸⁰ Despite the intent of the CHCF to protect rate payers, it was clear by 1989 the fund was not accomplishing its intended objectives.

The PUC then ordered that CHCF support be contingent upon a means test; finding that forecast earnings would not exceed the utilities authorized rate of return based on the most recent 7 months of data.¹⁸¹ Funding would be provided for a six year period, phased out over the last three years unless a rate case review was initiated by the ITC. The issuance of a Commission decision or resolution in a general rate proceeding will have the effect of a “fresh start” for that company under the CHCF plan. Eligibility was required to be established on an annual basis, hopefully negating the possibility of an ITC from obtaining revenues in excess of that needed to earn its last authorized rate of return.

In 1994, the PUC eliminated the common carrier line charge altogether and the CHCF was shifted to a surcharge on the expanded billing base set at .5%.

e) Deaf Equipment Acquisition Fund Trust (DEAF Trust)

In 1979, the California Legislature enacted Senate Bill 597 which added Section 2831 to the Public Utilities Code requiring the PUC to establish a program to furnish deaf and severely hearing impaired telephone subscribers with a device for communications.¹⁸² The DEAF Trust was established to receive funds and to reimburse telephone utilities for expenses incurred in providing specialized or supplementary telephone communications equipment to disabled customers. This program was initially funded by a 15-cent per telephone line per month surcharge and then reduced to a 3-cent per line surcharge.¹⁸³ Because the Telecommunications Devices for the Deaf (TDDs) funded by this program permitted communications only between two people with these devices, the fund soon accumulated a surplus of funds.

The surplus of funds naturally encouraged the legislature to expand the program. With the passage of Senate Bill 227, authorization was granted to distribute TDDs to any agency of the state which was determined to have significant public

contact.¹⁸⁴ Later amendments to this section permitted distribution of TDDs to deaf/hearing impaired organizations and the distribution of specialized or supplemental telephone communication equipment at no charge to subscribers who are certified to be disabled.¹⁸⁵ In 1985, the Legislature mandated the establishment of the California Relay System (CRS) to enable the deaf and severely hearing-impaired 24-hour contact with any other person with a telephone in the state. CRS is effectively a conduit for communication between those who are hearing impaired and the rest of the world.¹⁸⁶ The addition of these programs soon strained the 3-cent per line charge funding mechanism for the DEAF Trust. Although the funding was increased to the maximum 10-cent per line charge, the program continued to incur deficits.¹⁸⁷ To stave off continued losses for the program, the PUC in May of 1988 “reinterpreted” the definition of “subscriber line” (the base to which the rate is applied) to include every type of communications service offered by the telephone companies.¹⁸⁸

In June of 1988 an emergency measure amended Section 2881 of the Public Utilities Code to change the DEAF Trust funding mechanism from a per line charge to a percentage surcharge on all intrastate telephone service other than one-way radio paging and universal telephone service. A cap of .5% was placed on the amount of the surcharge in statute and immediately adopted by the PUC as the initial rate of the surcharge.¹⁸⁹ The rate was soon lowered to the current .3%.

Similarly to the ULTS and CHCF, the DEAF Trust basis was expanded in 1994 to include all end user telecommunications services.¹⁹⁰ The rate was left at .3%.

2. *Emergency Telephone Users Surcharge (911 Fee)*

The purpose of the Emergency Telephone Users Surcharge (911 fee) is to provide funding to local government for the state mandated emergency 911 system. In particular, the surcharge is intended for the acquisition and maintenance of the equipment necessary to implement the system. The surcharge is imposed on amounts paid by every person in the state for intrastate telephone communication services.¹⁹¹

The Department of General Services sets the surcharge rate by September 1st of each year and the rate is effective from November 1st to October 31st of the

following year. Statute provides that the 911 surcharge shall be at least .5% but never more than .75% of the charges made for intrastate communication services.¹⁹²

All amounts paid under this surcharge are to be paid to the State Board of Equalization. The Board is required to transmit the payments to the State Treasurer who deposits the collections in the State Emergency Telephone Number Account in the General Fund. Because this is a general fund account, in tight economic times it can and has been raided to support general government operations. For example, in fiscal years 1990-91 and 1991-92, a total of \$23 million was taken from the account, in fiscal year 1992-93, \$15 million, and in fiscal year 1993-94, \$11 million was diverted to support the general fund.¹⁹³ According to Assembly Utilities and Commerce Committee analysis, the approved upgrading of the 911 facilities in 25 counties was delayed in 1993-94 because of the \$11 million drain on the account.

3. *PUC Reimbursement Fee*

Article XII of the California Constitution establishes the Public Utilities Commission (P.U.C.). The P.U.C. consists of five members appointed by the Governor and approved by the Senate for 6-year terms. The Commission has wide latitude to perform both administrative and judicial functions. Its methods are more akin to investigations of facts than resolving disputes between adversarial parties. Although the Constitution lists certain industries as “public utilities” subject to regulation by the PUC, Article XII, Section 5, as interpreted by the courts, makes clear that the Legislature has plenary power to expand the role of the PUC in matters related to public utilities. In fact, the legislature has expanded the role of the PUC to “do all things, whether specifically designated in [statute] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”¹⁹⁴

To fund the regulatory activities of the PUC, State law provides for a Reimbursement Fee (a.k.a. “State Regulatory Fee”) on each of the services provided by the regulated utilities. The PUC has been given the authority to annually determine the amount of the fee necessary to be paid by all public utilities sufficient to fund the P.U.C.’s budget, including an appropriate reserve.¹⁹⁵

4. *Energy Resources Surcharge*

The Energy Resources Surcharge (ERS) is imposed on the consumption¹⁹⁶ of electricity purchased from a public electric utility in California at a rate fixed by the State Board of Equalization.¹⁹⁷ This charge does *not* burden those who receive their electricity from municipal utility.¹⁹⁸ The current rate is .0002 cents per kilowatt hour of usage, generating annual revenues of more than \$42 million.¹⁹⁹ The consumer of electricity is personally liable for payment of this surcharge which is collected by the public utility, remitted to the Board and credited to the Energy Resources Surcharge Fund.²⁰⁰

There have been three primary beneficiaries of the Energy Resources Surcharge Fund moneys: (1) *the Department of General Services* (averaging \$1.2 million/year for property management and administrative support services; (2) the *California Conservation Corps* (averaging \$5.6 million/year whose main objective is to employ youths ages 18 to 23 at minimum wage to enhance the state's natural resources); and (3) the *State Energy Resources, Conservation and Development Commission* (until 1995-96 received about \$34 million, dropped to \$31 million in 1995-96, for three main programs: (a) regulation and study of state energy supplies and demands; (b) through the Energy Resources Conservation Program develops conservation programs and ensures utility compliance with conservation mandates; and (c) research development of new energy technologies). Because the ERSF is within the general fund, it has historically been used as a method to back fill small amounts to the general fund.

For the 1995-96 Budget year, the Governor actually proposed eliminating the Energy Resources, Conservation and Development Commission folding their responsibilities into a new Department of Energy and Conservation. The proposal was not adopted by the Legislature during the 1995 session.

5. *Data Collected*

There are eight separate surcharges attached to the bills of telecommunications customers. Table C lists each surcharge and the corresponding revenues collected for each surcharge. The universal service related surcharges, the data was provided by the Public Utilities Commission. 1994-95 figures represent estimates by the P.U.C. of collections from the expanded tax base.

Because the Emergency Telephone Users Surcharge is collected by the BOE, annual revenue figures were readily available from BOE records. This was also the case with the Energy Resources Surcharge.

The P.U.C. regulatory fee comprises three separate fees: one on gas and heating, one on electric, and one on telecommunications usage. 1992-93 and 1993-94 data was provided by the P.U.C. For the 1994-95 fiscal year, estimates were made of the annual therm usage, kilowatt usage, and telephone revenues subject to the surcharge. The known rate of the surcharge was applied to the estimated base to derive the amount of revenues.

Endnotes

1. Microprocessors communicate in binary or digital language which is the rendering of information into combinations of 1's and 0's (or 'on' or 'off'). A single digit is referred to as a bit. Digitizing something, whether a letter, voice, picture, sound, video or raw data, is the process of representing the qualities of the object in digital form. Digital technology is important for two reasons: (1) information rendered in digital form lends itself to easy processing and manipulation, and (2) digital information can be compressed which substantially reduces the both storage capacity and bandwidth capacity needs.

2. This phrase has been popularized by many and often attributed to Vice President Al Gore whose father sponsored the 1956 Federal Aid Highway Act. Unfortunately, it doesn't really convey the realities of the future of telecommunications. See, BILL GATES, *THE ROAD AHEAD* 5 (1995); NICHOLAS NEGROPONTE, *BEING DIGITAL* 231 (1995).

3. The national information infrastructure or NII refers to the policy agenda of the Clinton administration on the development of the broadband information network. This agenda can be retrieved from the White House computer on the World Wide Web at <http://www.whitehouse.gov>.

4. See Barrett, *Public Policy and the Advanced Intelligent Network*, 42 FED. COM. L.J. 413 (July 1990). The number of bits that can be transmitted per second through a given channel or medium (copper wire, radio frequency spectrum or fiber optic cable) is the bandwidth of the channel. Bandwidth is important for two reasons: (1) Time is money and transmitting a fax to Hong Kong is cheaper the less time you are "on the air"; (2) To render live digital sound or full motion video over a transmission channel requires transmission of the samples or frames over the channel in close proximity. If the channel is low bandwidth, the frames will not be rendered at the other end in close enough proximity to appear as live motion video or sound. Bandwidth becomes less important as compression techniques improve. This is particularly important for the local exchange carriers who have vast installed networks of low bandwidth twisted-pair copper wires.

5. *Telephone Company Entry Into Video Services: A First Amendment Analysis*, 67 NOTRE DAME L. REV. 97 (1991) citing R. ENTMAN, *STATE TELECOMMUNICATIONS REGULATION: TOWARD POLICY FOR AN INTELLIGENT TELECOMMUNICATIONS INFRASTRUCTURE* 17 (1989).

6. The City of Woodland imposed a 21% utility user tax until 1995 when it was lowered to 18%.

7. *Utility User Taxes: A Rapidly Growing Revenue Source* (Research Brief), CALIFORNIA TAXPAYERS ASSOCIATION, March 1, 1994 at 5.

8. J. Gould, *The California Tax System*, 59 Cal.Code-1.

9. 1 Property Taxes Law Guide 1123 (California State Board of Equalization).

10. Gould, *supra*, at 18.

11. *Id.*

12. See former CAL. CONST. art XIII, § 14. The in-lieu tax was 3½ percent of gross receipts for telephone and telegraph companies; 4 percent for gas and electric companies. Although the tax was in-lieu of all other state and local taxation upon the property of public utilities, there was no limit placed upon the franchise payments.

13. 1 Property Tax Law Guide 1123 (SBE).

14. Bertrane, *The Assessment of Public Utility Property in California* (1973) 20 UCLA L.REV. 419, 423-424.

15. CAL. CONST. art XIII, § 14. See now Cal. Const. art XIII, § 19.

16. Bertrane, *supra*, at 421, note 13.

17. Stats. 1978 Ch. 1207, in effect January 1, 1978, operative January 1, 1981, amended CAL. REV. & TAX. CODE § 722 changing the assessment ratio from 25% of full cash value to full cash value.

18. 1 Property Taxes Law Guide 1123 (SBE).

19. (1971) 5 Cal. 3d 584, 96 Cal.Rptr. 601

20. *Id.*

21. *Homeowners brew a revolt*, BUSINESS WEEK, March 28, 1977, at 20.

22. CAL. CONST. art XIII A.

23. CAL. CONST. art XIII A, § 1(a).

24. CAL. CONST. art XIII A, § 2(a).

25. CAL. CONST. art XIII A, § 2(b).

26. *ITT World Comm., Inc. v. City and County of San Francisco* (1985), 37 Cal. 3d 859; 693 P.2d 811; 210 Cal. Rptr. 226.

27. The court reasoned that the concept of unit taxation is characterized "not as the taxation of real property or personal property or even a combination of both, but rather as the taxation of property as a going concern." *Id.* at

864. Because Proposition 13, by its terms, related only to the ad valorem taxation of real property, it was reasoned that unit valuation, and therefore, public utility properties were not affected by its passage. *Id.* at 865.

28. Exemptions include, the homeowner's exemption (up to a maximum of \$7,000 in assessed value), an exemption for educational properties, religious properties, veteran's property (up to a maximum \$1,000 in value) among others. See CAL. REV. & TAX. CODE §§ 201-241.

29. *Roehm v. County of Orange* (1948) 32 Cal.2d 280, 285.

30. CAL. REV. & TAX CODE § 212; *Roehm v. County of Orange*, *supra*.

31. *ITT World Communications*, *supra* at 870, interpreting art. XIII, sec. 19, which required utility property to be taxed to the same extent and in the same manner as other property, held there was no requirement of equal valuation between public utility and other property, but simply merely requires the use of the same rate.

32. CAL. GOV. CODE § 16120

33. As used in art. XIII, sec. 19, the term "franchises" refers to the intangible property of a corporation or the "general franchise" as opposed to the "special franchise" which provides utilities public rights of way to lay cable. *Los Angeles SMSA Ltd. Partnership v. State Board of Equalization*, 11 Cal. App. 4th 768.

34. See In the Matter of the Petition for Reassessment of the Unitary Property of Southern Pacific Communications Company, Valued as of March 1, 1981, before the State Board of Equalization of the State of California (September 30, 1981). See also 57 CAL. A.G. OPS 77 (1957).

35. See Board of Equalization Legal Division memo of February 7, 1994, from Eric Eisenlauer to Mr. Gene Mayer citing *Richfield Oil Corp. v. Public Utilities Commission* (1960) 54 Cal.2d 419, 433, 434.

36. CAL. PUB. UTIL. CODE § 234.

37. *Id.* at § 233.

38. See In the Matter of Southern Pacific Communications Company (September 30, 1981). citing *Commercial Communications v. Public Utilities Commission* (1958), 50 Cal.2d 512.

39. Assembly Bill 202 (Conroy), Chap. 357, Stats. 1995, exempts from the definition of "telephone corporation" "any one-way paging service utilizing facilities that are licensed by the Federal Communications Commission, including, but not limited to, narrowband personal communications services" (NPCS).

40. CAL. PUB. UTIL. CODE § 233.

41. See Board Memo of February 7, 1994 at 4. Board staff interprets art. XIII, sec. 19 as creating two classes of state assessee: (1) that of specifically described properties (pipelines, flumes, canals, ditches etc.) and (2) those of specifically identified industries (telephone, telegraph, and those transmitting or selling gas or electricity). Because the second class identifies an industry, any company which participates, at all, in any of the listed industries subjects all its property to state assessment.

42. To some extent this bifurcation is a misnomer. CAL. REV. & TAX. CODE § 723 permits the board to use the unit valuation method for property of an assessee that is operated as a unit in a primary function of the assessee. Section 724 also permits the board to value "operating nonunitary property" in the same manner as unitary property using the unit method of valuation. This effectively creates a distinction without a difference between unitary and operating nonunitary property. Although the classification of property as strictly nonunitary avoids the use of the unit method of valuation, all property that is subject to state assessment is still annually assessed at fair market value and is not afforded any protection by Proposition 13. *ITT World Communications*, *supra* at 866.

The difference is that operating nonunitary property is not part of the companies primary function (the function for which it is state assessed). For the telecommunications company that is subject to state assessment, there are three classes of property; unitary, operating nonunitary, and nonunitary. All of which are valued at full cash value on an annual basis.

43. CAL. REV. & TAX. CODE § 722.5.

44. *Id.* § 723.

45. *Id.* §§ 755-756, 758.

46. *Id.* § 722.

47. *Roehm v. County of Orange*, *supra* at 285.

48. 26 Cal.App.4th 992 (1994).

49. CAL. REV. & TAX. CODE § 110

50. *Roehm v. County of Orange*, *supra* at 285 (1948)..

51. CAL. REV. & TAX. CODE § 723. See also *GTE/Sprint*, *supra* at 995.

52. Bertrane, *supra* at 426. Unit valuation should be distinguished from the term 'unitary taxation' which relates primarily to the proper allocation of tax liability among multiple jurisdictions.

53. *ITT World Communications*, *supra* at 863.

54. *Id.*

55. 18 Cal. Codes of Regs. Rule 8.

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56. *Id.*
57. 18 Cal. Codes of Regs. Rule 3(d).
58. CAL. CONST. art. XIII, § 14 requires all property taxed by local government to be assessed in the county, city, and district in which it is situated.
59. CAL. CONST. art. XIII A §§ 1 and 2.
60. Personal property is defined as all property not real estate. CAL. REV. & TAX. CODE § 106.
61. By its terms art. XIII A applies only to the valuation of “real property.” See CAL. CONST. art. XIII A, §§ 1 and 2. The one percent limitation on the ad valorem taxation of personal property has more to do with art. XIII, § 1, which requires uniformity of tax rates for all property, than art. XIII A, which by its terms applies only to real property.
62. *Slovang Municipal Improvement District v. Board of Supervisors*, 112 Cal. App. 3d 545.
63. CAL. REV. & TAX. CODE § 75.11. See Chap. 499, Stats. 1995, Senate Bill 327 (T.Campbell) which changes the lien date to January 1, effective for the 1997 assessment year.
64. CAL. CONST. art. XIII A, § 2.
65. CAL. REV. & TAX. CODE, § 104.
66. CAL. REV. & TAX. CODE § 107, subd. (a).
67. 18 Cal. Codes of Regs. Rule 21. Although a possessory interest could exist in real property, CAL. REV. & TAX. CODE, § 107 has been interpreted so as not to include possessory interests in personal property as taxable. *General Dynamics Corp. v. Los Angeles County* (1958), 51 Cal.2d 59, 330 P.2d 794.
68. *State of California v. Moore* (1859), 12 Cal. 56.
69. CAL. REV. & TAX. CODE § 104.
70. *ITT World Comm., Inc., supra.*
71. See *Scott-Free River Expeditions, Inc. v. County of El Dorado*, (1988) 203 Cal.App.3d 896; *United Air Lines, Inc. v. County of San Diego* (1991) 1 Cal.App.4th 418.
72. *United Air Lines, Inc., supra.*
73. In *Scott-Free*, the appellate court held that a possessory interest existed where a river rafting company was required by a county to obtain a permit to use a river for commercial river rafting adventures, despite that the river was used by the public generally and available to others for commercial use upon application and award of a permit. *Id.* at 909-910.
74. *Id.* at 903.
75. CAL. GOV. CODE § 53066; CAL. PUB.UTIL. CODE § 6001.
76. *Cox Cable San Diego, Inc. v. San Diego County*, 185 Cal.App.3d 368 (cable television franchises); *Deluz Homes, Inc. v. San Diego County*, (1955) 45 Cal. 2d 546 (electric utility franchises).
77. *County of Stanislaus v. Assessment Appeals Bd.* (1989), 213 Cal.App. 3d 1445, 262 Cal.Rptr. 439.
78. CAL. REV. & TAX. CODE § 107.7; California State Board of Equalization Counsel Opinion dated 4/18/79.
79. CAL. PUB.UTIL. CODE § 7901; *Pacific Tel. & Tel. Co. v. City & Cty. of San Francisco* (1959) 51 Cal.2d 766; 336 P.2d 514.
80. “How We Got Where We Are”, Assembly Office of Research, California State Assembly, Memorandum to Assemblymember Valerie Brown, August 3, 1993 [hereinafter AOR Report].
81. Stats. 1978, Chp. 292 (SB 154).
82. Stats. 1979, Chp. 282.
83. CAL. REV. & TAX. CODE § 95 et. seq.
84. CAL. REV. & TAX. CODE § 97.03.
85. CAL. REV. & TAX. CODE § 97.02 and 97.035. The \$2.6 billion reallocation was apportioned among local governments by the Department of Finance on a county-by-county basis depending on the total Proposition 13 bailout assistance received by the County and the County’s proportionate share of total statewide sales taxes.
86. See *County of Los Angeles v. Alan T. Sasaki*, 23 Cal.App.4th 1442; 1994 Cal.App.LEXIS 274;; 29 Cal.Rptr.2d 103 (March 30, 1994) (challenging the 1993-94 shift) and *San Miguel Consolidated Fire Protection District v. Harry Weinberg* (May 25, 1994) 25 Cal.App.4th 134; 1994 Cal. App.LEXIS 504; 30 Cal.Rptr.2d 343 (challenging the 1992-93 shift).
87. 47 U.S.C.S. 542(b).
88. CAL. PUB. UTIL. CODE § 6001.
89. Black’s Law Dictionary, pg. 339 and 658.
90. For public utilities, this exemption is in Article XIII, § 19 of the California Constitution which specifically exempts general franchises from assessment and taxation. *Los Angeles SMSA Limited Partnership v. State Board of Equalization*, 11 Cal.App.4th 768, 14 Cal.Rptr.2d 522. For corporations other than public utilities, the exemption from taxation of the general franchise is contained in CAL. REV. & TAX. CODE § 23154 which provides that the franchise tax imposed on corporations is in lieu of all ad valorem taxes and assessments upon the *general* corporate franchises.

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91. *Boman v. Birmingham Transit Co.*, 280 F.2d 531 (5th Cir, 1960); Black's Law Dictionary p.658 citing *Artesian Water Co. v. State, Dept. of Highways and Transp.*, Del.Super., 330 A.2d 432, 439.
92. *Emil G. Shubat v. Sutter County Assessment Appeals Board No. 1*, 13 Cal.App.4th 794, 176 Cal.Rptr.2d 1. As noted, the right to do business generally and the right to do a specialized business such as providing cable services within a municipality, can be confused, but are both intangible assets which cannot be assessed for property tax purposes. As separate franchises, the locality can exact a fee for granting the privilege to provide cable services which is separate and distinct from the corporate franchise to do business in a general sense.
93. *County of Stanislaus v. Assessment Appeals Bd.*, (1989) 213 Cal.App.3d 1445; 262 Cal.Rptr. 439; *Shubat v. Sutter County*, *supra* This tangible portion, the possessory interest, is clearly subject to property taxes as an interest in real property.
94. Chp. 498, Stat. 1995. Senate Bill 657 (Maddy).
95. *County of Tulare v. City of Dinuba* (1922) 188 Cal. 664
96. *Pac. Tel. & Tel. Co. v. City & County of S.F.* (1959) 51 C.2d 766, 336 P.2d 514; *Southern Pacific Pipe Lines v. Long Beach*, (1988) 251 Cal.Rptr. 411; *County of Inyo v. Hess* (1921) 53 Cal.App. 415.
97. *Southern Pacific Pipe Lines, Inc. supra*. See e.g. CAL. GOV. CODE § 26001 (relating to county franchises); CAL. GOV. CODE § 39732 (relating to cities granting franchises). See also CAL. PUB. UTIL. CODE § 6001 et seq. relating to public utility franchises. While not conferring any rights by itself, Article XII, Section 8 of the California Constitution recognizes the right of cities to grant franchises for public utilities or other businesses. *Pac. Tel. & Tel. Co. v. City of Los Angeles* (1955) 44 Cal.2d 272, 280-281, 282 P.2d 36; *Southern Pacific Pipe Lines, Inc. v. City of Long Beach*, (1988) 204 Cal.App.3d 660; 251 Cal.Rptr.411.
98. *County of Tulare v. City of Dinuba*, (1922) 188 Cal. 664, 669; *Alameda County v. Janssen, Chairman of Board of Sup'rs*, 106 P.2d. 11 (1940).
99. CAL. CONST. art. XI, § 5, subd (a); Gov. Code § 34102. General law cities are simply creatures of state and, as such, are parts of machinery by which state conducts its governmental affairs. *Williams v San Carlos* (1965) 233 CA2d 290, 43 Cal Rptr 486. A general law city has the powers expressly conferred by the Legislature, together with the powers necessarily incident to those expressly granted or essential to the declared object and purposes of the municipal corporation. *Irwin v Manhattan Beach* (1966) 65 C.2d 13, 51 Cal Rptr 881, 415 P.2d 769.
100. CAL. CONST. art. XI, § 1(a).
101. CAL. CONST. art. XI, §§ 4 and 7.
102. CAL. PUB. UTIL. CODE § 7901 (former CAL. CIV. CODE § 526, as repealed and re-enacted by Stats. 1905 ch. 285, § 1, pp 491, 492. *Pacific Telephone and Telegraph Company v. City and County of San Francisco* (1959) 51 Cal.2d 766; 336 P.2d 514. Telephone corporations may be required to obtain a permit, including payment of sufficient moneys to cover the costs of local inspection, restoration of the public lands and incidental expenses of the local public works department. *Id.* at 773-774.
103. Cable Service is defined as “(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.” 47 U.S.C.A. § 522(6).
104. Pub.L. 102-385, §§ 27, 28, Oct. 5, 1992, 106 Stat. 1503, eff. 60 days after Oct. 5, 1992; 47 U.S.C.A. § 152. See generally *U.S. v. Midwest Video Corp.* (1972) 92 S.Ct. 1860, 406 U.S. 649.
105. 47 U.S.C.S. §542(a).
106. *Southern Pacific Pipe Lines v. Long Beach*, (1988) 204 Cal.App.3d 660, 251 Cal.Rptr. 411; *Cox Cable San Diego v. City of San Diego*, (1987) 188 Cal.App.3d 952, 233 Cal.Rptr. 735.
107. *California Fed. S&L Assn. v. City Of Los Angeles*, (1991) 54 Cal. 3d 1; 812 P.2d 916, ; 283 Cal. Rptr. 569; *Cox Cable San Diego v. City of San Diego*, *supra*. “It is likewise settled that the constitutional concept of municipal affairs is not a fixed or static quantity. It changes with the changing conditions upon which it is to operate. What may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state. *Pacific Telephone and Telegraph Company v. City and County of San Francisco* (1959) 51 Cal.2d 766; 336 P.2d 514.
108. *California Fed. S&L Assn. v. City Of Los Angeles* (1991) 54 Cal.3d 1, 812 P.2d. 916.
109. *Id.* at 17 citing Van Alstyne, *Background Study Relating to Article XI, Local Government*, Cal. Const. Revision Com., Proposed Revision (1966) p. 239.
110. *Id.* at 17-18; *Pac. Tel. & Tel. v. City & County of San Francisco* (1959) 51 Cal.2d 766, 771, 336 P.2d 514; *Cox Cable San Diego v. City of San Diego*, (4th Dist, 1987) 188 Cal.App.3d 960, 233 Cal.Rptr. 735.
111. CAL. GOV. CODE § 53066.
112. *Cox Cable San Diego v. City of San Diego*, (4th Dist, 1987) 188 Cal.App.3d 960, 233 Cal.Rptr. 735.
113. *Pac. Tel. & Tel. v. City & County of San Francisco* (1959) 51 Cal.2d 766, 771, 336 P.2d 514
114. CAL. PUB. UTIL. CODE § 6205.
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115. *Southern Pacific Pipe Lines v. Long Beach*, (2nd Dist., 1988) 204 Cal.App.3d 663, 251 Cal.Rptr. 411.
116. CAL. GOV. CODE § 26001 (relating to county franchises); Gov. Code § 39732 (relating to cities granting franchises).
117. CAL. PUB. UTIL. CODE § 7901. *Pacific Tel. & Tel. Co. v. City of Los Angeles*, (1955) 44 Cal.2d 272, 276, 282 P.2d 36.; *Pacific Telephone and Telegraph Company v. City and County of San Francisco* (1959) 51 Cal.2d 766; 336 P.2d 514
118. CAL. PUB. UTIL. CODE § 6001.
119. CAL. PUB. UTIL. CODE § 6201.
120. CAL. PUB. UTIL. CODE § 6001.
121. CAL. PUB. UTIL. CODE §§ 6201.5; 6205.
122. CAL. PUB. UTIL. CODE § 6205.
123. Annual Report of Financial Transactions Concerning Cities of California, Fiscal year 1992-93, State Controller.
124. San Francisco Chronicle, pg. A19, 11/30/94.
125. *Id.*
126. Pub.L. 98-549, 98 Stat. 2780.
127. Pub.L. 102-385, 106 Stat. 1460.
128. 47 U.S.C.A. § 542
129. (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service. 47 U.S.C.A. § 522(6).
130. 47 U.S.C.A. § 541(b)(2).
131. CAL. GOV. CODE § 53066 et. seq.
132. CAL. GOV. CODE § 53066.
133. *Cox Cable San Diego v. City of San Diego*, (4th Dist, 1987) 188 Cal.App.3d 960, 233 Cal.Rptr. 735.
134. Preemption by federal statute can occur where Congress shows “persuasive indicia” of an intent to occupy the field in a particular area (*Shaw*, 463 U.S. at 95, 103 S.Ct. at 2898 (1983)) or where state law is in direct conflict with the federal provisions (*Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305 (1977)). A conflict can occur where it is impossible to comply with both state and federal laws or the state law stands as an obstacle to Congress’ purpose. *Florida Lime & Avocado Growers v. Paul*, 373 U.S. 132, 142-143, 83 S.Ct. 1210 (1963).
135. 47 U.S.C.A. § 521.
136. *Los Angeles County v. Southern Cal. Tel. Co.* (1948) 32 C.2d 378, 196 P.2d 773; *Pacific Tel. & Tel. Co. v. City of Los Angeles*, (1955) 44 Cal.2d 272, 276, 282 P.2d 36.
137. *Id.*
138. 47 U.S.C.A. § 541(b). Cable service is defined as “(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.” 47 U.S.C.A. § 522(6).
139. *In re Telephone Company-Cable Television Cross-Ownership Rules, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rule making*, 7 FCC Rcd. 5781 (1992).
140. H1555, 104th Congress, 1st Session, (1995) § 243(e).
141. 47 U.S.C.A. § 301-309.
142. 47 U.S.C.A. § 159.
143. *Id.*
144. 47 U.S.C.A. § 309(e).
145. 47 U.S.C.A. § 309(i).
146. Pub.L. No. 103-66, 107 Stat. 312 (1993).
147. 47 U.S.C.A. § 309(j).
148. 47 U.S.C.A. § 309 (j)(8).
149. FCC Adopts Rules to Expand Wireless Communications Services, DAILY REP. FOR EXECUTIVES, Sept. 24, 1993, at A-26.
150. 47 U.S.C.A. § 332(3).
151. CAL. GOV. CODE. § 37100.5.
152. Research Brief, Utility User Taxes: A Rapidly Growing Revenue Source, Cal-Tax News, March 1, 1994 at 5.
153. CAL. GOV. CODE. §§ 53720-53730.
154. CAL. REV. & TAX. CODE § 7284.2
155. CAL. PUB. UTIL. CODE § 879. (Stat. 1987, c.163, §2, eff. July 16, 1987). Former CAL. PUB. UTIL. CODE § 739.2, added by Stat. 1983, c.1142, § 2).
156. CAL. PUB. UTIL. CODE § 739.3.

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157. CAL. PUB. UTIL. CODE § 2881(d).
 158. Stats 1994, c. 1260.
 159. Stats 1994, c. 278
 160. Decision 95-07-050.
 161. 1984 Cal. PUC LEXIS 1314; 14 CPUC2d 616. See U.S. v. AT&T, 552 F.Supp. 131 (1982).
 162. Stat. 1983, c. 1143, § 2.
 163. Former CAL. PUB.UTIL. CODE § 739.2.
 164. D.84-04-053 (14 CPUC2d 616).
 165. 14 CPUC 2d 616.
 166. D. 90642 (2 CPUC 2d 89)
 167. 47 CFR 69.104.
 168. 47 CFR 69.104(j).
 169. PUC § 875(b).
 170. D.87-10-088 (25 CPUC 556).
 171. Stats. 1987, c. 163. (AB 386)
 172. PUC § 879(d).; D.87-10-088 (25 CPUC 556).
 173. D.87-10-088 (25 CPUC 556).
 174. For pricing purposes, the local exchange carriers' services are divided into three categories: *Category I* services whose rates can be changed only with Commission approval (basic monopoly services); *Category II* services with downward pricing flexibility (discretionary or partially competitive services); and *Category III* services which have the maximum pricing flexibility allowed by law (enhanced services, Yellow Page directory advertising services, inside wiring services, and any services found in the future to be fully competitive).

Category I (Fixed Price Services):

Basic access services	Local message charges	Zone unit measurement
Extended Area Service	Other local	IntraLATA message toll
Switched access	Low speed private lines	Low speed special access
Operator services	"911," "411"	Centrex/PBX loops
BSEs, other ONA services		

Category II (Flexibly Priced Services/Phase I Services):

Centrex and EBSS features	Custom calling/vertical services	High speed digital private lines
Information access services	High speed special access	Billing and collection services

Category III (Services with Maximum Pricing Flexibility/Enhanced Services):

Protocol conversion	Voice mail	Electronic messaging
Voice store and forward	Directory advertising services	Inside wiring services

175. D.95-07-050.
 176. D.95-07-050.
 177. D.85-06-115.
 178. D.91-09-042.
 179. D.88-07-022.
 180. D.90-12-080; D.91-05-016.
 181. D.91-05-016
 182. D.92603 (5 CPUC2d 305) 1981.
 183. D.92603 (5 CPUC2d 305) 1981.
 184. D.88-05-065 (28 CPUC2d 181) May 1988.
 185. *Id.*
 186. *Id.*
 187. Resolution T-12043 enacted the 10-cent line charge effective August 1987.
 188. D.88-05-065 (28 CPUC2d 181).
 189. Resolution T-13005.
 190. D.94-09-065
 191. CAL. REV. & TAX. CODE § 41020. Intrastate telephone communication services means all local or toll telephone services where the point or points of origin and the point or points of destination of the service are all located in this state. Rev. & Tax. Code § 41010. The surcharge does not apply to charges for services or equipment furnished by a service supplier subject to state or federal utility regulation during any period when the same or similar service or equipment is also available for sale or lease from other companies that are not subject to state or federal public utility regulation. Rev. & Tax. Code § 41019.
 192. CAL. REV. & TAX. CODE § 41030.

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193. Assembly Committee on Utilities and Commerce, Analysis of ACA 9 (Rainey), June 12, 1995.
 194. CAL. PUB. UTIL. CODE § 701.
 195. CAL. PUB. UTIL. CODE § 431.
 196. Consumption does not include self generated electricity, or electricity purchased by a utility used in the process of generation, transmission, and distribution of electricity. Reg. 2317.
 197. CAL. REV. & TAX. CODE § 40016. The rate can be *lowered* by the Legislature.
 198. As of 1991 municipal utilities accounted for more than 40,000 gigawatts in electricity sales.
 199. State Board of Equalization Annual Report, 1993-94, Table 34. The last rate increase was set to 0.0002 per kilowatt hour in 1982. Revenues figures from Governor's Budget Proposal, 1995-96.
 200. *Id.* §§ 40181, 40182.

Overview of California Telecommunications Tax System

PROPERTY TAX

FRANCHISE FEES

UTILITY USER TAX

SURCHARGES

Pass Through Tax?

Reference

[illegible]

PROPOSED IN-LIEU TAX

Table A-1

Taxes to Replace

PROPERTY TAXES: *See Table A-2*

	<i>1993 Assessed Value</i>	<i>Rate</i>	
Local-Exchange Carriers	22,166,866,757	1.0925%	242,173,019
Inter-Exchange Carriers	3,176,355,740		34,701,686
Cellular Carriers	1,245,285,880		13,604,748
Paging and Mobile Phone	184,469,560		2,015,330
Cable Television	3,732,396,725		40,776,434
Wireless Cable			0

Sub Total

333,271,218

Electric, Gas and Electric	34,179,403,389		373,409,982
Gas	3,797,711,488	1.0925%	41,489,998

TOTAL Property Taxes:

748,171,198

FRANCHISE FEES: *See Table*

Cable	109,417,854
Electric	142,870,208
Gas	76,968,553

TOTAL Franchise Fees:

329,256,615

TAXES TO REPLACE:

<i>Maximum (Gas and Electric and their Franchises):</i>	1,077,427,813
<i>Minimum (No Gas or Electric)</i>	442,689,072

Gross Revenues

Local-Exchange Carriers	14,181,612,801
Inter-Exchange Carriers	6,342,187,695
Cellular Carriers	2,080,923,947
Paging and Mobile Phone	372,625,486
Cable Television	2,393,950,298
Wireless Cable	25,293,421

Sub Total

25,396,593,648

Electric, Gas and Electric	18,468,656,757
Gas	2,961,671,343

Total Gross Revenue

46,826,921,748

In-Lieu Rate

High	2.3009%
Low	1.7431%

See Table A-5

Property Taxes

Table A-2

	1994	1993	1992
<u>Total Assessed Values:</u> ⁽¹⁾			
State Assessed Property	68,976,086,320	68,675,606,820	72,471,519,977
Locally Assessed Property	<u>1,837,778,288.00</u>	<u>1,814,367,257.40</u>	<u>1,755,528,869.00</u>
Total Gross Assessed Value:	1,906,754,374,32	1,883,042,864,22	1,828,000,388,97
Value of "Other Exemptions"	43,364,025,000	43,260,367,923	38,162,342,000
Value of Home Owner's Exemption:	<u>35,158,747,000</u>	<u>34,295,460,904</u>	<u>33,511,369,000</u>
Net Taxable Assessed Value:	1,828,231,602,32	1,805,487,035,39	1,756,326,677,97

Value of Telecom Property:⁽²⁾

Local-Exchange Carriers	21,194,202,454	22,166,866,757	23,303,744,181
Inter-Exchange Carriers	3,227,722,030	3,176,355,740	2,265,526,220
Cellular Carriers	2,333,772,283	1,245,285,880	4,701,909,540
Paging and Mobile Phone	241,236,020	184,469,560	214,609,551
Cable Television ⁽³⁾	3,792,115,073	3,732,396,725	3,581,239,707
Gas and Electric ⁽⁴⁾	<u>38,520,538,188</u>	<u>37,977,114,877</u>	<u>37,925,608,413</u>
Total Telecom Property Value:	69,309,586,048	68,482,489,539	71,992,637,612
State Wide Percentage of Net Value:	3.79%	3.79%	4.10%

Average Property Tax Rates:⁽⁵⁾

Lowest Average Rate: (<i>Mariposa</i>)	1.0000%	1.0000%
Highest Average: (<i>San Francisco</i>)	1.1490%	1.1490%
Average Property Tax Rate (All Property)	1.0571%	1.0611%
Average Telecom Property Tax Rate (BOE): See Table A-2.1	1.0925%	1.0878%

Estimated Property Tax to Replace:⁽⁶⁾

	1993-94	1992-93
<i>Sum of County Avg P-Tax Rate x Assessed Value of Telecom in County</i>	707,266,609	751,432,671
<i>BOE Avg Telecom P-Tax rate (1.0925%) x Total Telecom Assessed Value</i>	<u>748,171,198</u>	<u>783,135,912</u>

- (1) Total assessed values were derived from the B.O.E.'s Annual Report for the corresponding years.
- (2) Industry assessed values were acquired from B.O.E. staff, reported in total in the B.O.E. Annual Report. In an apparent oversight, the Board's annual reports include within the totals for Local Exchange Carriers the value of property held
- (3) Cable assessed values were acquired from industry sources. The values are based upon those entered on the rolls. However, many values are currently being challenged by the cable companies, which industry representatives believe could lower the assessed values by 5-10%. 1994 assessed values for cable were estimated for illustration purposes based upon the prior year's growth (16%). Despite the lack of cooperation from the County Assessor's Association,
- (4) Reported here is the total assessed value for all gas and electric companies. Companies providing only Electric or both gas and electric represent approximately 90% of the total assessed property value in this industry.
- (5) Average property tax rates are reported by each county to the B.O.E. in its Annual Report. The average of these average property tax rates is a weighted average (giving greater emphasis to those counties with higher assessed values). The Telecom rate was calculated by B.O.E. staff based upon state assessee supplied tax liability information. Although each industry may have a different average property tax rate, the weighted average amounted to
- (6) Estimated property taxes to replace relates to the fiscal year impacts of the property tax on local governments. Values for property as in existence as of the January 1 lien date are set in May and the roll prepared in July of each year. Taxes are actually paid on those values across a fiscal year (November and March of each year), thus reflected

Franchise Fees

Table A-3

	1993-94	1992-93	1991-92
Cities ⁽¹⁾	275,932,716	293,976,748	247,121,811
Counties	53,323,899	52,254,938	47,181,246
	<u>329,256,615</u>	<u>346,231,687</u>	<u>294,303,057</u>
Cable ⁽²⁾	109,417,854	103,743,134	93,962,922
Electric	142,870,208	144,113,471	131,654,641
Gas	76,968,553	98,375,082	68,685,494
	<u>329,256,615</u>	<u>346,231,687</u>	<u>294,303,057</u>

(1) City franchise fees includes those paid to the City and County of San Francisco.

(2) Cable franchise fees includes \$2.5 million paid to the Sacramento Metropolitan Cable Television Commission (SMCTC) which is actually a payment on a settlement agreement over a disputed franchise. The settlement agreement with Sacramento Cable (recently sold to Comcast) is an annual flat payment of \$2.5 million and allocated to the cities of Galt, Folsom and Sacramento and the County of Sacramento. The settlement agreement does not expire until the year 2023. It is unclear how the sale of

Gross Revenue

Table A-4

	1993
Electric, Gas and Electric ⁽¹⁾	18,468,656,757
Gas	2,961,671,343
Local-Exchange Carrier ⁽²⁾	14,181,612,801
Inter-Exchange Carriers	6,342,187,695
Cellular Carriers	2,080,923,947
Paging and Mobile Phone	372,625,486
Cable Television <i>(estimated, see below)</i>	2,393,950,298
Wireless Cable Television <i>(estimated, see below)</i>	25,293,421
Total Gross Revenue	
46,826,921,748	

Estimating Cable Television Revenue

Estimated Subscribers ⁽³⁾	6,300,660
Estimated Annual Revenue per ⁽⁴⁾	350
Estimated Gross Revenue:	<u>2,205,483,026</u>

Weighted Average Franchise Rate Orange ⁽⁵⁾	4.74%
Franchise Revenues Statewide (1992-93)	<u>109,417,854</u>
Estimated Gross Revenue:	<u>2,308,393,544</u>

Franchise Revenues City of San Francisco ⁽⁶⁾	3,338,853	<u>Average of Three</u>
Franchise Rate City of S.F.:	5%	<u>2,393,950,298</u>
Gross Revenues from City of S.F.	66,777,060	
Estimated Subscribers: ⁽⁷⁾	157,700	
Estimated Annual Revenue per	423	
Estimated Subscribers	6,300,660	
Estimated Gross Revenues:	<u>2,667,974,324</u>	

Estimating Wireless Cable Television Revenue

Estimated Subscribers ⁽⁸⁾	73,802
Estimated Annual Revenue per ⁽⁹⁾	342.72
Estimated Gross Revenue:	<u>25,293,421</u>

- (1) Represents revenues of electric and gas and electric companies only.
- (2) Revenue figures for Gas and Electric, Local Exchange Carriers, Inter-exchange Carriers, Cellular Carriers, and Paging and Mobile Telephone Carriers supplied by B.O.E. Staff as reported to them
- (3) Estimated basic subscribers. Television and Cable Factbook, Vol. 63, Warren Publishing, Inc., p F-5 . @1995. Subscriber data provided by cable companies as of 1/1/93 or 1/1/94.
- (4) Estimated annual revenue per subscriber. Strategic Assessment, The Wireless Cable Television Industry, NatWest Securities, October 1994, p. 11, citing Paul Kagan Associates 1994 report. Furnished
- (5) Franchise revenue and rates per cable provider furnished by Orange County Board of Supervisors.
- (6) Franchise revenue and rate provided by City and County of San Francisco Controller's Office for FY
- (7) Reported to Television and Cable Factbook, supra, by Viacom Cable as of 1/1/93.
- (8) Wireless Cable Television Association International, Inc., Washington, D.C.
- (9) Estimated annual revenue per subscriber. Strategic Assessment, The Wireless Cable Television Industry, NatWest Securities, October 1994, p. 11, citing Paul Kagan Associates 1994 report. Furnished

In-Lieu Rate Options

Table A-5

Option One: *Telephone, Cable, all Gas and Electric*

Property Taxes	748,171,198
Franchise Fees	329,256,615
Taxes to replace:	1,077,427,813
Revenues	46,826,771,144
In-Lieu Rate	2.3009%
Effect of \$10 Million in additional	0.0214%
Effect of \$100 Million in additional	-0.0049%

Option Two: *Telephone, Cable, Electric, Gas and Electric (No Gas only Companies; No Gas*

Property Taxes	706,681,200
Franchise Fees	252,288,062
Taxes to replace:	958,969,262
Revenues	43,865,099,801
In-Lieu Rate	2.1862%
Effect of \$10 Million in additional	0.0228%
Effect of \$100 Million in additional	-0.0050%

Option Three: *Seperate Rate for Electric and Gas and Electric (No Gas only Companies; No Gas*

Property Taxes	373,409,982
Franchise Fees	142,870,208
Taxes to replace:	516,280,190
Revenues	18,468,656,757
In-Lieu Rate	2.7954%
Effect of \$10 Million in additional	0.0541%
Effect of \$100 Million in additional	-0.0151%

Option Four: *Seperate Rate for Gas and*

Property Taxes	414,899,980
Franchise Fees	219,838,761
Taxes to replace:	634,738,741
Revenues	21,430,328,100
In-Lieu Rate - Gas and Electric	2.9619%
Effect of \$10 Million in additional	0.0467%
Effect of \$100 Million in additional	-0.0138%

Option Five: *Telephone and Cable.*

Property Taxes	333,271,218
Franchise Fees	109,417,854
Taxes to replace:	442,689,072
Revenues	25,396,443,044
In-Lieu Rate	1.7431%
Effect of \$10 Million in additional	0.0394%
Effect of \$100 Million in additional	-0.0068%

Total Utility User Taxes

Table B-1

	1993-94	1992-93	1991-92
Cities	1,088,516,273	996,227,389	933,782,399
City and County of San Francisco	46,576,841	37,439,989	26,636,941
Counties	71,943,283	0	0
TOTAL:	1,207,036,397	1,033,667,378	960,419,340

Cities with Utility User Taxes: (1993-94)

Total: 170

Agoura Hills	Alameda	Albany	Alhambra	Anaheim	Arcadia	Arcata
Arroyo Grande	Artesia	Avalon	Azusa	Baldwin Park	Beaumont	Bell
Bellflower	Benicia	Berkeley	Brawley	Buena Park	Burbank	Calabasas
Calexico	Calimesa	Carmel-By-The-Sea	Ceres	Chico	Chino	Chula Vista
Claremont	Cloverdale	Compton	Covina	Cudahy	Culver City	Cupertino
Daly City	Desert Hot Springs	Dinuba	Downey	Duarte	East Palo Alto	El Centro
El Cerrito	El Monte	El Segundo	Emeryville	Eureka	Exeter	Fairfax
Fairfield	Firebaugh	Fontana	Fullerton	Gardena	Gilroy	Glendale
Gonzales	Greenfield	Grover Beach	Guadalupe	Hawthorne	Hercules	Hermosa Beach
Hidden Hills	Hollister	Holtville	Huntington Beach	Huntington Park	Huron	Indio
Inglewood	Irvine	Irwindale	King City	Kingsburg	La Habra	La Palma
Lakewood	Lawndale	Lincoln	Lindsay	Loma Linda	Long Beach	Los Alamitos
Los Altos	Los Angeles	Lynwood	Malibu	Mammoth Lakes	Manteca	Marina
Maywood	Modesto	Montclair	Monterey	Monterey Park	Moreno Valley	Morgan Hill
Mountain View	Norco	Norwalk	Oakland	Orange Cove	Oroville	Pacific Grove
Pacifica	Palm Springs	Palo Alto	Palos Verdes Estates	Paramount	Pasadena	Pico Rivera
Piedmont	Pinole	Placentia	Pleasant Hill	Pomona	Port Hueneme	Porterville
Portola	Portola Valley	Rancho Cucamonga	Rancho Palos Verdes	Redlands	Redondo Beach	Redwood City
Richmond	Rio Dell	Riverside	Roseville	Sacramento	Salinas	San Bernardino
San Francisco	San Gabriel	San Jose	San Leandro	San Luis Obispo	San Marino	San Pablo
Sand City	Sanger	Santa Ana	Santa Barbara	Santa Cruz	Santa Monica	Santa Rosa
Saratoga	Scotts Valley	Seal Beach	Seaside	Sierra Madre	Soledad	South Pasadena
Stanton	Stockton	Sunnyvale	Tiburon	Torrance	Tulare	Vallejo
Ventura	Waterford	Watsonville	Westminster	Westmorland	Whittier	Winters
Woodlake	Woodland					

Counties with Utility User Taxes: (1993-94)

Total: 8

Alameda	Butte
Imperial	Los Angeles
Madera	Sacramento
Santa Cruz	Tulare

City Utility User Taxes: Effect of 8% Cap

Table B-2

City	County	1993-94			1992-93		
		Revenue	Rate	Rate Cap	Revenue	Rate	Rate Cap
Agoura Hills	Los Angeles	-	0.00%		-	0.00%	
Alameda	Alameda	4,360,038	5.50%		3,598,048	5.50%	
Albany	Alameda	807,466	5.50%		647,125	5.50%	
Alhambra	Los Angeles	2,723,796	5.00%		2,687,510	5.00%	
Anaheim	Orange	2,696,784	2.00%		8,367,434	2.00%	
Arcadia	Los Angeles	3,534,890	5.00%		3,558,280	5.00%	
Arcata	Humboldt	285,811	3.00%		-	0.00%	
Arroyo Grande	San Luis Obis	576,962	5.00%		-	0.00%	
Artesia	Los Angeles	329,655	2.00%		107,941	2.00%	
Avalon	Los Angeles	105,735	5.00%		38,132	5.00%	
Azusa	Los Angeles	790,607	1.00%		-	0.00%	
Baldwin Park	Los Angeles	1,510,322	3.00%		1,519,632	3.00%	
Beaumont	Riverside	650	3.00%		293,477	3.00%	
Bell	Los Angeles	1,589,104	8.00%		1,366,594	10.00%	-273,319
Bellflower	Los Angeles	1,047,387	5.00%		-	0.00%	
Benicia	Solano	2,188,332	4.00%		2,100,239	4.00%	
Berkeley	Alameda	8,818,544	7.50%		9,110,273	7.50%	
Brawley	Imperial	1,041,173	5.00%		836,390	5.00%	
Buena Park	Orange	1,826,971	3.00%		2,071,920	3.00%	
Burbank	Los Angeles	11,762,475	7.00%		11,895,374	7.00%	
Calabasas	Los Angeles	1,717,029	5.00%		1,678,124	5.00%	
Calexico	Imperial	739,712	5.00%		486,115	5.00%	
Calimesa	Riverside	80,621	3.00%		-	0.00%	
Carmel-By-The-S	Monterey	96,449	3.00%		92,930	2.50%	
Ceres	Stanislaus	1,037,380	5.00%		330,324	5.00%	
Chico	Butte	2,820,655	5.00%		2,323,767	5.00%	
Chino	San Bernardin	3,414,474	4.00%		-	0.00%	
Chula Vista	San Diego	2,953,216	5.00%		2,740,282	5.00%	
Claremont	Los Angeles	2,461,904	5.50%		113,277	5.50%	
Cloverdale	Sonoma	21,156	2.00%		-	0.00%	
Compton	Los Angeles	7,923,896	10.00%	-1,584,779	7,564,093	10.00%	-1,512,819
Covina	Los Angeles	1,369,973	6.00%		1,787,701	6.00%	
Cudahy	Los Angeles	454,585	4.00%		463,278	4.00%	
Culver City	Los Angeles	9,342,377	11.00%	-2,547,921	9,118,431	11.00%	-2,486,845
Cupertino	Santa Clara	1,944,798	0.02%		1,733,896	2.40%	
Daly City	San Mateo	3,640,468	5.00%		3,402,538	5.00%	
Desert Hot Spri	Riverside	76,610	3.00%		-	0.00%	
Dinuba	Tulare	434,639	7.00%		355,256	7.00%	
Downey	Los Angeles	4,027,031	3.00%		2,728,162	3.00%	
Duarte	Los Angeles	-	0.00%		-	0.00%	
East Palo Alto	San Mateo	-	0.00%		-	0.00%	
El Centro	Imperial	1,501,317	5.00%		1,479,492	5.00%	
El Cerrito	Contra Costa	1,859,345	8.00%		1,684,513	8.00%	
El Monte	Los Angeles	6,059,776	7.00%		4,200,000	7.00%	
El Segundo	Los Angeles	3,775,495	3.00%		3,641,066	3.00%	
Emeryville	Alameda	1,587,049	5.50%		1,268,264	5.50%	
Eureka	Humboldt	-	0.00%		-	0.00%	
Exeter	Tulare	18,750	5.00%		-	0.00%	
Fairfax	Marin	351,702	5.00%		308,172	5.00%	
Fairfield	Solano	-	0.00%		-	0.00%	
Firebaugh	Fresno	345,381	10.00%	-69,076	272,997	10.00%	-54,599
Fontana	San Bernardin	5,708,222	6.00%		-	0.00%	
Fullerton	Orange	1,866,129	2.00%		-	0.00%	
Gardena	Los Angeles	2,392,952	4.00%		2,480,285	4.00%	
Gilroy	Santa Clara	2,021,648	5.00%		1,810,117	5.00%	
Glendale	Los Angeles	14,058,222	7.00%		13,882,648	7.00%	
Gonzales	Monterey	162,682	2.00%		43,948	2.00%	
Greenfield	Monterey	224,376	6.00%		221,060	6.00%	
Grover Beach	San Luis Obis	91,672	1.00%		103,165	1.00%	
Guadalupe	Santa Barbara	141,353	7.00%		144,082	5.00%	
Hawthorne	Los Angeles	2,715,062	3.50%		2,668,975	3.50%	
Hercules	Contra Costa	880,828	5.25%		906,460	5.00%	

City	County	1993-94			1992-93		
		Revenue	Rate	Rate Cap	Revenue	Rate	Rate Cap
Hermosa Beach	Los Angeles	2,422,710	10.00%	-484,542	2,324,113	10.00%	-464,823
Hidden Hills	Los Angeles	324,717	10.00%	-64,943	401,583	10.00%	-80,317
Hollister	San Benito	-	0.00%		-	0.00%	
Holtville	Imperial	303,562	5.00%		209,450	5.00%	
Huntington Beac	Orange	16,105,895	5.00%		12,572,120	5.00%	
Huntington Park	Los Angeles	1,077,659	3.00%		455,731	3.00%	
Huron	Fresno	94,095	5.00%		107,346	5.00%	
Indio	Riverside	1,857,123	5.00%		1,770,873	5.00%	
Inglewood	Los Angeles	12,334,746	10.00%	-2,466,949	11,856,288	10.00%	-2,371,258
Irvine	Orange	2,345,178	1.50%		1,988,293	1.50%	
Irwindale	Los Angeles	2,262,557	5.00%		2,386,198	5.00%	
King City	Monterey	51,910	2.00%		-	0.00%	
Kingsburg	Fresno	288,774	5.00%		-	0.00%	
La Habra	Orange	3,726,429	6.00%		112,556	6.00%	
La Palma	Orange	278,124	5.00%		-	0.00%	
Lakewood	Los Angeles	1,885,340	3.00%		1,591,430	3.00%	
Lawndale	Los Angeles	-	0.00%		-	0.00%	
Lincoln	Placer	102,727	5.00%		-	0.00%	
Lindsay	Tulare	-	0.00%		-	0.00%	
Loma Linda	San Bernardin	-	0.00%		-	0.00%	
Long Beach	Los Angeles	50,963,416	10.00%	-10,192,683	51,122,712	10.00%	-10,224,542
Los Alamitos	Orange	1,495,165	6.00%		1,507,853	6.00%	
Los Altos	Santa Clara	1,234,325	3.50%		1,012,990	2.90%	
Los Angeles	Los Angeles	433,533,319	10.00%	-86,706,664	415,069,04	10.00%	-83,013,809
Lynwood	Los Angeles	2,510,366	9.00%	-278,930	2,029,121	8.00%	
Malibu	Los Angeles	1,633,804	5.00%		1,387,660	5.00%	
Mammoth Lakes	Mono	-	0.00%		-	0.00%	
Manteca	San Joaquin	483,197	10.00%	-96,639	460,924	10.00%	-92,185
Marina	Monterey	411,617	5.00%		-	0.00%	
Maywood	Los Angeles	598,407	5.00%		149,133	5.00%	
Modesto	Stanislaus	9,981,743	5.00%		9,072,236	5.00%	
Montclair	San Bernardin	1,780,010	5.00%		1,864,392	5.00%	
Monterey	Monterey	1,271,082	2.00%		1,156,311	5.00%	
Monterey Park	Los Angeles	2,501,007	3.00%		2,110,906	3.00%	
Moreno Valley	Riverside	5,949,973	6.00%		6,114,524	6.00%	
Morgan Hill	Santa Clara	1,097	9.00%	-122	1,216,868	9.00%	-135,208
Mountain View	Santa Clara	3,377,535	3.00%		3,261,981	3.00%	
Norco	Riverside	365,332	0.00%		-	0.00%	
Norwalk	Los Angeles	4,963,318	7.00%		3,699,334	8.00%	
Oakland	Alameda	33,132,582	7.50%		29,052,275	6.80%	
Orange Cove	Fresno	163,367	5.00%		138,581	5.00%	
Oroville	Butte	638,357	5.00%		550,369	5.00%	
Pacific Grove	Monterey	885,870	5.00%		927,767	5.00%	
Pacifica	San Mateo	962,712	6.50%		936,132	6.50%	
Palm Springs	Riverside	2,543,648	5.00%		-	0.00%	
Palo Alto	Santa Clara	5,454,511	5.00%		5,362,244	5.00%	
Palos Verdes Es	Los Angeles	1,878,718	10.00%	-375,744	1,808,115	10.00%	-361,623
Paramount	Los Angeles	1,399,563	3.00%		509,046	1.00%	
Pasadena	Los Angeles	18,312,615	0.00%		17,406,770	0.00%	
Pico Rivera	Los Angeles	2,418,623	5.00%		1,331,775	5.00%	
Piedmont	Alameda	693,875	7.50%		690,941	7.50%	
Pinole	Contra Costa	1,080,099	8.00%		1,029,145	7.00%	
Placentia	Orange	1,580,183	4.00%		1,265,090	3.00%	
Pleasant Hill	Contra Costa	96,773	1.00%		95,345	1.00%	
Pomona	Los Angeles	13,640,651	10.00%	-2,728,130	13,617,116	10.00%	-2,723,423
Port Hueneme	Ventura	-	0.00%		-	0.00%	
Porterville	Tulare	1,816,706	6.00%		1,720,759	6.00%	
Portola	Plumas	-	0.00%		-	0.00%	
Portola Valley	San Mateo	411,805	6.50%		400,012	6.50%	
Rancho Cucamong	San Bernardin	5,694,363	4.66%		-	0.00%	
Rancho Palos Ve	Los Angeles	661,763	3.00%		-	0.00%	
Redlands	San Bernardin	7,586	4.00%		-	0.00%	
Redondo Beach	Los Angeles	5,088,168	4.75%		4,132,051	4.75%	
Redwood City	San Mateo	4,191,168	5.00%		3,998,548	5.00%	
Richmond	Contra Costa	12,283,328	6.00%		11,393,241	6.00%	
Rio Dell	Humboldt	123,104	7.00%		64,516	7.00%	
Riverside	Riverside	16,333,265	6.50%		16,209,392	6.50%	
Roseville	Placer	4,275,207	5.00%		3,956,261	5.00%	
Sacramento	Sacramento	35,109,375	7.50%		30,143,286	7.50%	
Salinas	Monterey	4,739,946	5.00%		4,238,854	5.00%	

City	County	1993-94			1992-93		
		Revenue	Rate	Rate Cap	Revenue	Rate	Rate Cap
San Bernardino	San Bernardin	16,692,463	8.50%	-981,910	16,524,672	8.50%	-972,040
San Francisco	San Francisco	46,576,841	7.50%		37,439,989	6.50%	
San Gabriel	Los Angeles	2,259,530	6.00%		420,704	6.00%	
San Jose	Santa Clara	43,261,388	5.00%		41,407,709	5.00%	
San Leandro	Alameda	5,801,604	5.00%		5,534,979	5.00%	
San Luis Obispo	San Luis Obis	2,698,100	5.00%		2,563,700	5.00%	
San Marino	Los Angeles	1,005,013	5.00%		283,109	5.00%	
San Pablo	Contra Costa	1,410,300	8.00%		1,361,971	8.00%	
Sand City	Monterey	64,675	5.00%		61,221	5.00%	
Sanger	Fresno	576,059	5.00%		594,402	5.00%	
Santa Ana	Orange	16,686,614	6.00%		15,668,256	5.00%	
Santa Barbara	Santa Barbara	7,509,728	6.00%		6,407,996	6.00%	
Santa Cruz	Santa Cruz	4,834,510	7.00%		4,145,866	7.00%	
Santa Monica	Los Angeles	20,967,425	10.00%	-4,193,485	17,997,288	9.50%	-2,841,677
Santa Rosa	Sonoma	6,149,300	5.00%		6,494,212	5.00%	
Saratoga	Santa Clara	715,239	3.50%		735,562	3.50%	
Scotts Valley	Santa Cruz	539,086	4.00%		365,021	4.00%	
Seal Beach	Orange	3,462,520	11.00%	-944,324	1,819,755	5.00%	
Seaside	Monterey	1,091,864	6.00%		1,059,445	6.00%	
Sierra Madre	Los Angeles	434,754	6.00%		-	0.00%	
Soledad	Monterey	214,825	5.00%		-	0.00%	
South Pasadena	Los Angeles	1,304,270	5.00%		805,835	5.00%	
Stanton	Orange	1,409,263	6.00%		4,232	6.00%	
Stockton	San Joaquin	20,466,256	8.00%		18,717,584	7.20%	
Sunnyvale	Santa Clara	4,363,278	0.20%		4,113,655	2.00%	
Tiburon	Marin	-	0.00%		-	0.00%	
Torrance	Los Angeles	19,551,328	6.50%		20,031,313	6.50%	
Tulare	Tulare	1,871,212	6.00%		1,813,421	6.00%	
Vallejo	Solano	6,937,743	7.50%		6,648,453	7.50%	
Ventura	Ventura	5,205,872	5.00%		5,060,787	5.00%	
Waterford	Stanislaus	179,907	6.00%		166,022	6.00%	
Watsonville	Santa Cruz	1,879,087	6.00%		1,749,229	6.00%	
Westminster	Orange	3,621,506	5.00%		3,191,727	5.00%	
Westmorland	Imperial	60,283	5.00%		-	0.00%	
Whittier	Los Angeles	4,129,989	4.50%		3,722,069	4.00%	
Winters	Yolo	210,783	5.00%		47,595	5.00%	
Woodlake	Tulare	171,092	6.00%		172,301	6.00%	
Woodland	Yolo	329,581	21.00%	-204,026	315,907	21.00%	-195,561
Total Cost of Rate Cap for				-113,920,867			-107,804,047

Telecommunications Surcharge

Table C

	1994-95	1993-94	1992-93
Universal Service			
Univ. Lifeline Trust Fund Surch. ⁽¹⁾	380,000,000	307,183,968	206,676,992
High Cost Fund Surcharge ⁽²⁾	46,700,000	<i>Not Available</i>	<i>Not Available</i>
D.E.A.F. Fund Surcharge ⁽³⁾ 29,756,273		33,497,725	26,088,085
Low Income Ratepayer Assistance (LIRA) ⁽⁴⁾ now (CARE)	Awaiting Data	43,376,193	44,123,907
Total Universal Service Collections:	<u>460,197,725</u>	<u>376,648,246</u>	<u>280,557,172</u>
Other Surcharges:			
Emerg. Teleph. Users Surcharge	74,690,000	70,889,000	67,445,000
Energy Resources Surcharge	41,660,000	40,706,000	41,349,000
P.U.C. Regulatory Fee:			
Gas and Heating	Awaiting Data	9,434,099	10,152,199
Electric	Awaiting Data	18,589,797	18,910,246
Telecommunications (.1% of Revenue)	12,666,000	11,000,511	10,505,487
Total Regulatory Fees	<u>12,666,000</u>	<u>39,024,407</u>	<u>39,567,932</u>
Total Surcharges:	<u>589,213,725</u>	<u>527,267,653</u>	<u>428,919,104</u>

- (1) The ULTS rate was dropped to 3.0% in 1994, but the base of services subjected to the tax was expanded to include all end user telecommunications services. The 1994-95 figure is based on PUC estimates.
- (2) The High Cost Fund Surcharge as of 1/1/95 was shifted from long distance toll rates to all intrastate communications. The rate continues at .5%. The 1994-95 figure is based on PUC estimates.
- (3) Similarly to the ULTS, the base of services subject to the DEAF Trust surcharge was expanded in 1994 to include all end user telecommunications services. The DEAF rate was not altered from the current .3%. The 1994-95 figure is based on PUC estimates.
- (4) The Low Income Ratepayer Assistance (LIRA) program was changed to the CARE program in 1994. Listed figures are estimated based upon the .0028/kwh charge to fund the program.